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The New Canon Law in its Practical Aspects

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THE NEW CANON LAW

I.

A GENERAL SURVEY OF THE CODE.

THE new codification of Canon Law is completed. The steps that led up to this memorable event in the history of ecclesiastical jurisprudence are best set forth by the reigning Pontiff in his Bull *Providentissima Mater Ecclesia*, in which he promulgates the new Code. We submit the following translation of the Latin original.

TO OUR VENERABLE BRETHREN AND BELOVED SONS, THE PATRIARCHS, PRIMATES, ARCHBISHOPS, BISHOPS, AND OTHER ORDINARIES, AND ALSO TO PROFESSORS AND STUDENTS OF CATHOLIC UNIVERSITIES AND SEMINARIES.

BENEDICT BISHOP

Servant of the Servants of God

For a perpetual remembrance.

The Church, most provident mother, endowed by her Divine Founder with all the requisites of a perfect society, when, in obedience to the Lord's mandate, she commenced in the very beginning of her existence to teach and govern all nations, undertook by promulgating laws the task of guiding and safeguarding the discipline of the clergy and the faithful.

As time elapsed, particularly after she had gained her liberty and, daily waxing stronger, had extended her kingdom, she never ceased to set forth and to define her own inherent right of making laws. Witness in proof of this the many and various decrees of the Roman Pontiffs and Ecumenical Councils which were published as the times and circumstances suggested. By these laws and enactments not only did she make wise provision

for the direction of the clergy and people, but, as history bears witness, she promoted also most effectually the development of civilization. For not only did she abolish the laws of barbarous nations and remodel on more humane lines their savage customs, but likewise, with God's assistance, she reformed and brought to Christian perfection the very law of the Romans, that wonderful monument of ancient wisdom which is deservedly styled *ratio scripta*, so as to have at hand, as the rules of public and private life improved, abundant material both for medieval and modern legislation.

With inevitable changes nevertheless in the conditions of the times and in the needs of men, as our predecessor, Pius X of happy memory, pointed out in the Motu Proprio *Arduum sane*, issued 17 March, 1904, it became apparent that Canon Law could no longer readily attain the fulness of its aims. Indeed in the passing of centuries many, many laws had been published, of which some had been abrogated by the supreme authority of the Church or had fallen into desuetude; whilst others, owing to changed conditions, had become difficult of execution, or less useful and expedient for the common good. Moreover these laws had so increased in number and were so separated one from another and scattered about that many of them were unknown not merely to the people at large, but even to the most learned.

For these reasons our predecessor, Pius X of happy memory, immediately on his accession to the Pontificate, realizing how helpful it would be for the stable restoration of ecclesiastical discipline to put an end to the serious inconveniences above referred to, resolved to arrange in a clear and orderly collection all the laws of the Church which had been proclaimed down to our day, abolishing those already abrogated or obsolete, adapting others to present needs and making new ones as necessity or expediency should require.[1] Setting about this most difficult task after mature deliberation, he considered it necessary to consult the bishops *whom the Holy Ghost hath placed to rule the Church of God*, so as to know fully their mind on this matter; and first of all he caused the Cardinal Secretary of State to write letters to all the archbishops of the Catholic world, charging them to interrogate their suffragans, and other Ordi-

[1] Cf. Motu proprio *Arduum sane*.

naries, who are obliged to assist at provincial synods, if there were any such, and to inform the Holy See with as little delay as possible and briefly concerning the modifications and corrections which in their opinion might be especially necessary in the present laws of the Church.[2]

Then, having summoned several canonists of note, resident in Rome and elsewhere, to lend their aid, he committed to our beloved son Cardinal Gasparri, who was at that time Archbishop of Cesarea, the office of directing, perfecting, and, if need be, supplementing the work of the Consultors. He moreover formed a committee or, as it is called, a *Commission* of Cardinals of the Holy Roman Church, appointing as its members Cardinals Dominic Ferrata, Casimir Gennari, Benjamin Cavicchioni, Joseph Calasanctius Vives y Tuto, and Felix Cavagnis, who with Cardinal Gasparri as *ponens*, were to examine diligently the proposed canons, and modify, correct, or perfect them as their judgment might suggest.[3] On the death, one after another, of these five, their places were taken by our beloved sons, Cardinals Vincent Vannutelli, Cajetan de Lai, Sebastian Martinelli, Basil Pompili, Cajetan Bisleti, William Van Rossum, Philip Giustini, and Michael Lega, who have admirably completed the work imposed upon them.

Lastly, seeking once more the prudence and authority of all the brethren of the Episcopate, he directed that to each of them and to all superiors of Religious Orders who are legitimately invited to an ecumenical council, a copy of the new Code, compiled and corrected, should be sent before its promulgation, in order that they might freely express their views in regard to the canons as prepared.[4]

In the meantime, however, to the sorrow of the whole Catholic world, our predecessor of immortal memory passed from this life, and it devolved on us, as by the secret council of God we entered on the Pontificate, to receive with due honor the opinions, coming from every quarter of the world, of those who with us constitute the teaching Church. Finally we ratified, approved and sanctioned in all its parts the new Code of the whole of

2 Cf. Epistolam *Pergratum mihi*, 25 March, 1904.

3 Cf. Motu proprio *Arduum sane*.

4 Cf. Epistolam *De Mandato*, 20 March, 1912.

Canon Law, which was asked for by many bishops in the Vatican Council, and which was begun over twelve years ago.

Therefore, having sought the aid of Divine grace, trusting in the authority of the Blessed Apostles Peter and Paul, *motu proprio*, of our certain knowledge and in the fulness of the Apostolic power with which we are invested, by this our constitution, which we wish to be binding for all time, we promulgate, and we decree and order that the present Code, just as it is drawn up, have in future the force of law for the universal Church, and we entrust it for safekeeping to your custody and vigilance.

That all concerned, however, may have full knowledge of the prescripts of this Code before they become effective, we decree and ordain that they shall not have the force of law till Pentecost of next year, that is, on the nineteenth day of May, 1918.

All enactments, constitutions and privileges whatsoever, even those worthy of special and individual mention, and customs, even immemorial, and all other things whatsoever to the contrary notwithstanding.

Wherefore let no one violate or rashly oppose in any way this document of our constitution, ordinance, limitation, suppression, derogation, and expressed will. And if any one shall presume to attempt to do so, let him know that he will incur the wrath of Almighty God and of His Blessed Apostles Peter and Paul.

Given at Rome, at St. Peter's, on the Feast of Pentecost, in the year nineteen hundred and seventeen, the third of our Pontificate.

PETER CARDINAL GASPARRI,
Secretary of State.

O. CARDINAL CAGIANO DE AZEVEDO,
Chancellor of the Holy Roman Church.

CONTENTS AND DIVISION OF THE NEW CODE.

The Code contains 2414 canons.

The idea of publishing the entire legislation of the Church in canons is not new. It was adopted some years ago by Monsignor Pezzani, a professor in the Vatican Seminary, who in 1894 began to publish in this form, with

copious explanatory notes, a work that he styled *Codex Sanctae Catholicae Romanae Ecclesiae.* The setting forth of legislation in distinct decrees lends itself to conciseness and clearness.

The ancient division of Canon Law into three parts, introduced by Gratian in the twelfth century and so commonly followed in our text books, has been abandoned, the present Codex being made up of five books, though the old order or method of treatment remains practically the same.

In the first book are found certain preliminaries or general ideas, termed *Normae Generales.* Then follow under separate titles fundamental notions on law in general, customs, rescripts, privileges, and dispensations. The third title, on the method of computing time in years, months and days, as required in the application of canon law, contains some details that are new, though much of the matter has been made up of previous decrees. In the *Normae generales*, which are only seven in number, we are reminded of the canonical principle that the legislation of the Latin Church does not necessarily extend to the Oriental Church. Liturgical regulations, we are informed, are not professedly treated in the new codification, and those now in vogue retain their force, except where the present Code may state the contrary. Thus the musical regulations of Pius X, while still in force, are not embodied in the Codex. Special pacts or concordats between the Holy See and civil powers are not affected. The same is true of privileges or indults now enjoyed, owing to the favor of the Holy See, by individuals or associations, where they have not been specially revoked. Canon five speaks of the effect of the new legislation on present legitimate *customs*, whether particular or universal, while the next number, which is especially

specific or detailed, treats similarly of the cessation or abrogation of present *laws*. The last General Rule assures us that ordinarily the appellation *Apostolic See* or *Holy See* embraces, as well as His Holiness, the Roman Congregations, Tribunals, and Offices, which assist in ruling the universal Church.

The second book or division of the Code treats of persons ("De Personis"), the third of things ("De Rebus"), the fourth of processes ("De Processibus"), and finally the fifth, of crimes and punishments ("De Delictis et Poenis").

The fourth book is subdivided into three parts, which treat of trials ("De judiciis"), the process or formalities to be observed in preparing for the beatification or canonization of saints ("De Causis beatificationis Servorum Dei et canonizationis Beatorum"), processes in special cases (" De modo procedendi in nonnullis expediendis negotiis vel sanctionibus poenalibus applicandis").

The fifth book is made up also of three parts, in which we find the legislation respectively on crimes ("De Delictis"), punishments in general ("De Poenis"), and punishments that are applicable in particular cases ("De Poenis in singula delicta").

The fourth and fifth books of the Codex comprise no less than 863 canons, or nearly one-third of the entire volume. The former legislation of the Church in the matter contained in these parts has been modified to some extent, while some new material and many details have been added.

Naturally the portions of the Codex that especially attract our interest are the second and third books, which, we may add in passing, are extremely orderly. The second book, after a few general statements, treats of

clerics specifically, namely of the Pope, the Cardinals, and so on in order, of Religious, of the laity. The third book, after a few general decrees, takes up the Sacraments, treating each in turn, then passes on to sacred places and times ("De locis et temporibus sacris"). The third part of this section is occupied with Divine cult ("De cultu divino"), the fourth with preaching, catechising, teaching, and the like ("De Magisterio ecclesiastico"), the fifth with benefices and other associations ("De beneficiis aliisque institutis ecclesiasticis non collegialibus"), and finally the sixth with temporal goods ("De bonis Ecclesiae temporalibus"). While in these second and third books of the Codex the changes are not for the most part drastic, yet many occur. Let us direct attention to some of the more important.

New Points of Legislation.

A person who has reached the age of twenty-one is a *major*; under that age, a *minor*. A *diocesan* domicile, as was held by many canonists, is possible. A person consequently may move about in a diocese from parish to parish, not remaining long enough in any one to acquire a *parochial* domicile, and yet retain a canonical domicile in the diocese. A domicile may be acquired by a residence of ten years without further formalities, a quasi-domicile by the mere fact of a residence of more than six months. The pastor of those who have merely a diocesan, not parochial, domicile or quasi-domicile is the rector of the parish in which those persons reside at the moment. Canon 97 is most important, since it changes radically the definition of affinity: "Affinitas oritur ex matrimonio *valido* sive rato tantum sive rato et consummato." The chapter on the obligations of clerics removes all possibility of discussion. Canon 120 specifies that the permis-

sion required to cite a cleric into a civil court is that of the bishop of the place where the court sits ("venia Ordinarii loci in quo causa peragitur"). Under the caption *De reductione clericorum ad statum laicalem* we find among other things: "Clericus major qui ad statum laicalem rediit, ut inter clericos denuo admittatur, indiget Sanctae Sedis licentia" (Can. 212, § 2).

All *dioceses* are divided into parishes ("paroeciae"), strictly so called in canonical parlance; *Vicariates and Prefectures Apostolic* into *quasi-parishes* or missions (Can. 216). This fact constitutes a monumental change in the canonical status of the rectors of our churches, who now become *parochi* with all rights and obligations accordingly. These rights and duties, however, as we shall see later, have undergone various modifications. While parishes with definite territorial boundaries alone are canonical, so-called national parishes merit some recognition, especially when already established, as the subjoined quotation will show: "Non possunt sine speciali apostolico indulto constitui paroeciae pro diversitate sermonis seu nationis fidelium in eadem civitate vel territorio degentium, nec paroeciae mere familiares aut personales; ad *constitutas* autem quod attinet, *nihil innovandum*, inconsulta Apostolica Sede" (Can. 216 § 4). The division of a diocese into deaneries is prescribed, unless the Holy See in particular cases decide otherwise.

The privileges of Cardinals are mentioned in detail. It is stated that no one may be created Cardinal who is related in the first or second degree of consanguinity to one already in the Sacred College. Less than seven pages are devoted in the Codex to the Roman Congregations. Tribunals, and Offices. We note, as was announced some months ago, the suppression of the Congregation of the Index, the Holy Office assuming its work, also the estab-

lishment of a separate Congregation for Oriental affairs; while the Congregation of Seminaries and Universities appears with its new title. Under the Holy Office the following appears: "Ipsa una competens est circa ea omnia quae jejunium eucharisticum pro sacerdotibus Missam celebrantibus respiciunt." All legates *a latere,* Nuntios, Internuntios or Apostolic Delegates may pontificate *outside cathedral churches,* using throne and crozier, *without the Ordinary's permission.*

Primates and Metropolitans.

Persistent investigation has failed to reveal in the Codex any mention of the cross which is borne before patriarchs, primates, and archbishops. The practice, which prevails in many places, of having a double transverse bar on a *metropolitan* cross, was seemingly contrary to the law. A positive statement concerning this question was expected in the new Codex. Formerly an archbishop could make a canonical visitation of a suffragan's see only for reasons approved in a provincial synod, and then only after having finished a like visitation of his own diocese. That an archbishop may now visit canonically a suffragan's territory, negligence on the part of the suffragan to make such visitation is necessary, and the Holy See must have passed upon the matter. Further concessions than before are extended to archbishops who have not yet received the *pallium.* Decree 276 reads thus: "Quare ante pallii impositionem, excluso speciali indulto apostolico, ipse illicite ponerat actus sive jurisdictionis metropolitanae, sive ordinis episcopalis in quibus ad normam legum liturgicarum, *usus pallii* requiritur." Regulations governing the use of the pallium remain the same.

Councils.

A provincial council is to be held at least every twenty years, a diocesan synod once in ten years at least. A plenary council remains, of course, subject to the call of the Pope. Diocesan bishops may send their coadjutor or auxiliary to a plenary council in their stead. Titular bishops must attend the plenary council and ordinarily enjoy therein a decisive vote. Titular bishops who assist at a provincial synod may, with the consent of the synod, be granted a similar vote. The old legislation declared that titular bishops *who did not possess jurisdiction*, might be granted this honor: which restriction or limitation is now withdrawn. Those to whom the law gives a decisive vote in either a plenary or provincial council, may, if inability to attend is proved, appoint a substitute. This substitute, as such, has no vote, enjoying merely a right to his *own* vote, if this belong to him by law. Like regulations in regard to voting by substitutes prevail in an ecumenical council (Can. 224). No one has a double vote in any council. The Codex admits what practice centuries ago had introduced, namely, that an individual bishop may in his own territory grant a dispensation for just reasons from the decrees of a plenary or provincial council.

Bishops and Their Curia.

The canonical age for the episcopate remains at thirty. The doctorate or licentiate in Theology or Canon Law for this office is not insisted on. Sweeping changes in regard to the duties, rights or privileges of bishops are not, of course, possible in the new legislation. A canonical visitation of his diocese in all its parts is incumbent upon a bishop at least every five years. This duty must be performed by the vicar general or other delegate, if the bishop personally is unable to attend to it. In this con-

nexion we read: "circa vero victualia sibi suisque ministranda vel procurationes *et expensas itineris*, servetur legitima locorum consuetudo" (Can. 346). The diocesan curia is composed of all who assist in administering the affairs of the whole diocese: "Quare ad eam pertinent Vicarius Generalis, officialis, cancellarius, promotor justitiae, defensor vinculi, synodales judices et examinatores, parochi consultores, auditores, notarii, cursores et apparitores" (Can. 363). A vicar general should be at least thirty years old, belong to the secular clergy, and not be related in the first degree of consanguinity to the bishop of the diocese. If, however, the bishop is a religious, he may select a member of the same order or congregation as his vicar general. Ordinarily there is only one vicar general in a diocese. Difference of rites or excess of work may permit more. A substitute may supply when the regular incumbent is absent or unable to act. "Cancellarius est eo ipso notarius. Poscente necessitate, adjutor ei dari potest, cui nomen sit vice-cancellarii seu vice-tabularii" (Can. 372). The work of the notary or notaries, since more than one is allowed, is described in Canon 374. The notary or clerk in criminal clerical trials must be a priest; in other cases laymen may act. Regulations are laid down for the custody of the diocesan archives, public and secret, " sede episcopali sive plena sive vacante." Synodal examiners and parish priest consultors hold office from one diocesan synod to another, or, where no synod intervenes, for *ten* years, since such synods need not be held, according to the new law, except every ten years.

Chapters and Diocesan Consultors.

The few pages on cathedral and collegiate chapters, which have not been introduced into the United States.

need not detain us. Where cathedral chapters do not exist, diocesan consultors are of obligation. Our Third Plenary Council of Baltimore has seemingly furnished the foundation and some of the details for this legislation. These consultors ordinarily should number six, and only where priests are scarce will four suffice. They must be residents of the episcopal city or of its neighborhood, so that they may be at hand when needed. They are selected *solely by the bishop* for a term of three years. At the expiration of this term the bishop reappoints the same consultors or selects one or more new ones, as he may see fit. If however *during* any of these triennial periods a vacancy occur, the bishop in completing the required number must seek the advice of the remaining consultors, as has been in vogue in the United States. Those thus chosen go out of office with the others when their term expires. Should the episcopal see be vacant at the expiration of the three-year term in question, the consultors continue in office till the new incumbent, within six months after his installation, makes his selection. A new feature in the matter is the selection of a consultor or consultors *during the vacancy of the see* to fill up the requisite number. The selection is made by the vicar capitular, or, for us, by the administrator with a majority vote ("de consensu aliorum consultorum") of the consultors remaining. Consultors chosen under such circumstances cannot act after the accession of the new bishop unless the selection is confirmed by him. All consultors, under oath, must promise faithful service.

We must insist on the force of Canon 427: "Coetus consultorum dioecesanorum *vices Capituli cathedralis*, qua Episcopi senatus, *supplet*; quare quae canones ad gubernationem dioecesis, sive sede plena sive ea impedita aut vacante, Capitulo cathedrali tribuunt, ea de coetu quo-

que consultorum dioecesanorum intelligenda sunt." Our diocesan consultors consequently assume all the rights and obligations in the administration of the diocese, whether the see is filled or vacant, that belong to the cathedral chapter. To the consultors, then, among other rights and duties, *it would seem*, belongs that of electing by majority vote the administrator of a vacant see. The selection with us formerly was made by the bishop before his death, or, if he failed to do so, it devolved on the archbishop. These temporary appointments were subject to papal approval. If a diocese became vacant for reasons other than death, it was the metropolitan's place to select the administrator. A vicar capitular, and consequently an administrator, we believe, of a vacant see, has the same obligation as the bishop of applying Mass for the faithful on all Sundays and feast days, even though suppressed (Can. 440).

Parish Priests.

While it is the mind of the Church that parish priests should be appointed for life, it is not essential. This mitigation of the law is evident in the present Code. Parishes where pastors are *permanent*, can not lose this feature without permission of the Holy See, while to *other* parishes bishops, with the advice of the cathedral chapter, or of the consultors, with us, may grant permanent pastors. As regards parishes that may later be erected, their rectors are irremovable, unless the bishop with the cathedral chapter, owing to peculiar conditions, judge this to be inadvisable. All this applies in the United States, since those in charge of our churches are now *parochi*. An examination, not competitive, is prescribed for appointment to a parish. This however may be dispensed with, if the examiners consent, "si agatur

de sacerdote doctrinae theologicae laude commendato" (Can. 459). The concursus or competitive examination, where now prescribed, will continue, till the Holy See decide otherwise. A parish priest may not preside over more than one parish, "nisi de paroeciis agatur aeque principaliter unitis" (Can. 460), where namely the parishes remain distinct, each with equal rights. As far then as this feature is concerned, the status of our priests who look after the welfare of two or more parishes, remains unaltered. The law of residence naturally is insisted on. Written permission of the Ordinary must be obtained by a parish priest, if he would absent himself for more than a week from his parish. If the cause of departure suddenly arise and the absence is to extend beyond a week, the bishop must be notified by letter and acquainted with the circumstances involved (Can. 465). Our pastors henceforth will have the obligation *ex justitia* of applying Mass on all Sundays and holidays, actually observed or suppressed. Those who are in charge of more than one parish will satisfy this obligation by offering one Mass on the prescribed days. Some modification has been made in the application of this regulation. The Ordinary may permit for suitable reasons the offering of this Mass of obligation on a day other than the one laid down in the law. While ordinarily it is said in the parochial church, yet it may, if this is inconvenient, be offered elsewhere; and when the pastor is legitimately absent, he may say it himself, or have it offered by his substitute in the parish church. Moral Theology does not allow a stipend, except on Christmas, for a second Mass said by a parish priest on one of these days.

All pastors, and other priests as well, may by reason of the general law, impart the papal blessing with a plenary indulgence *in articulo mortis* (Can. 468). Con-

firmation, subdeaconship and solemn profession in Religion, as well as marriages contracted, are to be noted in the baptismal register. These too should be mentioned in a baptismal certificate when granted. "In fine cujuslibet anni parochus authenticum exemplar (*copy*) librorum paroecialium ad Curiam episcopalem transmittat, excepto libro de statu animarum" (Can. 470, § 3). As has ever been the practice in this country, the bishop, not the pastor, is to select the assistants: "Non ad parochum, sed ad loci Ordinarium, *audito parocho*, competit jus nominandi vicarios cooperatores e clero saeculari." The bishop too will determine the number of assistants necessary (Can. 476). Priests presiding over churches that are not parochial, or collegiate, or connected with Religious houses, are styled *rectors*.

Religious.

In the several pages of the Code allotted to their affairs, Religious will find much to interest them. We shall touch upon a few points only. All terms, with which we are familiar in this matter, are clearly defined, while the canonical regulations governing the erection and suppression of a congregation, province or community, the duties and rights of superiors and chapters or councils, together with the administration of temporal possessions, are set forth in order. Much is said of the novitiate, profession, confessions, studies of Religious clerics, obligations and privileges, dismissal, or voluntary abandonment of the community. Male and female congregations are treated, and there is a chapter also concerning those who without vows lead a community life. Let us note the following: "Caveant Superiores ne quem subditum aut ipsi per se aut per alium vi, metu, importunis suasionibus aliave ratione inducant ut peccata apud se con-

fiteantur'' (Can. 518, § 3). ''*Omnes* religiosi Superiores districte vetantur personas sibi subditas quoquo modo inducere *ad conscientiae manifestationem* sibi peragendam'' (Can. 530). This applies to male, as well as to female, Religious. Another Canon (891) is also applicable here: ''Magister novitiorum ejusque socius, Superior seminarii collegiive sacramentales confessiones suorum alumnorum secum in eadem domo commorantium ne audeat, nisi alumni ex gravi et urgenti causa in casibus particularibus sponte id petant.'' These and other decrees manifest the desire of the Church to safeguard the liberty of conscience of all.

A year's novitiate is absolutely necessary for the validity of a Religious profession. If a novice through necessity or with permission is absent from the novitiate not more than thirty days all told, it is sufficient to make up this time. Where under similar conditions the absence has not extended beyond fifteen days, the time may be supplied, but this is not necessary for the validity of the subsequent profession. Where there are two classes of members in an order, a novitiate made with the expectation of entering one of these will not suffice for the other. In all orders, male or female, perpetual vows must be preceded by simple vows of three years duration, or longer if age of candidate so require, unless particular constitutions demand annual vows. The vote of the council for temporary vows is decisive; for perpetual vows merely consultative. A Religious may not be excluded from final profession merely for reasons of health except where the physical weakness is proved to have been fraudulently concealed before profession of temporary vows. *Presumptive* incardination of an ex-Religious into a diocese may hold in certain specified cases (Can. 641, § 2), though, in general, formal or documentary incorporation

alone is recognized in law. An ex-Religious is excluded from certain defined positions or offices (Can. 642). A Religious who after the expiration of temporary vows has left a community, or who by reason of an indult has been *secularized*, or dismissed, has no pecuniary claims in justice for any work whatsoever performed while in religion, though charitable considerations, in some instances, may be binding (Can. 643). Stringent formalities are established for the dismissal of Religious, particularly after they have taken perpetual vows, either simple or solemn, "in religione *clericali aut non*," the details of which would not interest the general reader.

Laity.

Eight pages of the Code are devoted to lay persons. Their right to receive spiritual aid, in accordance with ecclesiastical discipline, from the clergy is established. The clerical dress is not for them, except in so far as they may be seminarists, or while actually employed about the church as sacristans, singers, or the like. The remainder of the matter under this head is occupied with the rights of the laity and the method of forming associations with a canonical or judicial standing. Minute details are given concerning the establishment, membership, administration and suppression of such associations. Archconfraternities, Confraternities, Pious Unions and Tertiaries enjoy special treatment.

II.

THE SACRAMENTS REVIEWED.

IN Canon Law everything that does not properly belong to some other division of the subject is treated under the caption *res*. This section of the new Code embraces 244 pages, which in turn are made up of 826 canons. This third book of the Code, which is of the utmost practical importance, opens with the definition and divisions of the term *res*. After three canons on *simony* and six on the *Sacraments* in general, each Sacrament is taken up separately. A second part is devoted to sacred places, divine cult, preaching, teaching, seminaries, schools, ecclesiastical benefices, and temporal goods. In the present chapter attention will be directed to some of the more essential regulations on these topics.

Baptism.

Deacons, although they are extraordinary ministers of this Sacrament, should not baptize without permission of the Ordinary or pastor. This permission will not be granted without sufficient cause, though, in case of necessity, it may be presumed. In private baptism two witnesses, or at least one, if possible, must be present so that proof of the Sacrament having been received may be available. The text here speaks of witnesses, not of sponsors. A person may be qualified as a witness, and not as a sponsor. Sponsors, when present, will supply the place of other witnesses, though the text is silent on this point. The proposed baptism of adults is made known, when convenient, to the Ordinary, so that he or someone delegated by him may, if he so desire, confer the Sacrament in a more solemn manner (Can. 774). It is even fitting in metropolitan and cathedral churches

that the baptism of adults, as was once the practice in the Church, take place on Holy Saturday or on the vigil of Pentecost (Can. 772).

Theological principles concerning those who may or should be baptized are repeated in the Code, while Canon 753 declares that ordinarily an adult, immediately after his baptism, should assist at Mass and receive Holy Communion. This will explain the second paragraph of the same Canon, according to which it is proper that the priest baptizing, as well as the adult in good health, whom he baptizes, should be fasting. The term *adult* throughout this matter is used in its liturgical sense, in contradistinction to *infant*, and signifies ordinarily any person over seven years of age. General law (Can. 755) now concedes what before was sometimes granted by special indult, since the Ordinary may for a serious reasonable cause permit an adult to be baptized according to the form that is used in the baptism of infants. It is not within the power of the Ordinary to permit a *private baptism,* except in the case of adult heretics who are baptized conditionally. This last concession, which refers to converts to the Church, and which had at times in the past been granted by special indult, now becomes universal. Solemn baptism should, of course, as a rule be administered in the church. The Ordinary may nevertheless in an extraordinary case, where there is a just and reasonable cause, allow in private houses the administration of this Sacrament with all the ceremonies of the Ritual (Can. 776, § 2). A decree of the Sacred Congregation of Rites, issued 17 January, 1914, had settled this question.

The Code naturally demands the presence of one sponsor, if possible ("quatenus fieri possit"), at the solemn administration of baptism, limiting the number

of sponsors in each case to two, one of each sex. The Code is at variance with the opinion of theologians in regard to a sponsor at *private* baptism. A sponsor is required even at the private administration by a lay person of this Sacrament, if one is easily obtainable ("si facile haberi queat"). If no sponsor is present at the baptism privately administered, one is required later when the prescribed ceremonies are supplied in the church. In this latter case, however, since the Sacrament is not actually administered, the sponsor does not contract any spiritual relationship (Can. 762). If for any reason the Sacrament is readministered conditionally, the same sponsor as before, if possible, should be present; otherwise none is required. If the same sponsor acts in both cases, he contracts a spiritual relationship with the person baptized. When one person acts as sponsor at the first administration of the Sacrament, and another when baptism is later conferred conditionally, neither contracts any spiritual relationship (Can. 763). A sponsor in baptism should ordinarily be at least fourteen years of age. To act in this capacity a cleric in Major Orders needs the express consent of his Ordinary. Religious too of either sex are acceptable in case of necessity only, and then only with the permission of their superior. There is no longer any spiritual relationship arising in baptism between the parents of the one baptized and the minister of the Sacrament or the sponsors (Can. 768).

A parish priest is the qualified registrar of his parochial records. As the decree *Ne temere* demanded that the pastor *manu sua* write his own matrimonial records, even though not assisting personally at the marriage, so now the present Code, though not expressing this point quite so clearly, seems to impose the same per-

sonal obligation regarding the baptismal registry. We quote in full Canon 777:

§ 1: Parochi debent nomina baptizatorum, mentione facta de ministro, parentibus ac patrinis, de loco ac de die collati baptismi, in baptismali libro sedulo et sine ulla mora referre.

§ 2: Ubi vero de illegitimis filiis agatur, matris nomen est inserendum, si publice ejus maternitas constet, vel ipsa sponte sua scripto vel coram duobus testibus id petat; item nomen patris, dummodo ipse sponte sua a parocho vel scripto vel coram duobus testibus id requirat, vel ex publico authentico documento sit notus; in ceteris casibus inscribatur natus tanquam filius patris ignoti vel ignotorum parentum.

Thus does the second paragraph put an end to another vexed question.

When a person is baptized outside his own parish or in the absence of his pastor, said pastor should be notified without delay. The chief reason of this legislation, though the text (Can. 778) does not mention it, is, we judge, that the necessary record may be kept; as a baptismal certificate would naturally be sought in one's own parish. Where the rights of another are not at stake, the testimony of one worthy witness should be accepted in proof that a person has been baptized; the oath too of one who has been baptized in adult age will be sufficient in like circumstances in proof of his or her own baptism (Can. 779).

Confirmation.

This Sacrament need not long detain us. A bishop must see that confirmation is administered at least every five years in the various parishes of his diocese. If he is negligent in the performance of this duty, it devolves upon the archbishop to report the matter to the Holy See (Can. 274, § 4). It is recommended that this Sacrament should not as a rule be administered in the Latin

Church to children under seven years of age. Nevertheless younger children may be confirmed, if in danger of death, or when for other serious and just reasons the bishop sees fit to administer the Sacrament (Can. 778). Each person confirmed should have a sponsor, if possible, and one only. A sponsor may act for one or at most two, unless the prelate who is confirming for just reasons decide otherwise (Can. 794). As a rule the same individual ought not to fulfill the office of sponsor for the same person in both Baptism and Confirmation. This however is allowed when Baptism is followed immediately by Confirmation, or in other cases when the bishop confirming permits it for sufficient reason (Can. 796).

The record of the Confirmation, which the pastor must enter in the book set aside for that purpose, will contain all necessary details, that is, the names of those confirmed, of their parents and sponsors, of the bishop officiating, the place and date of the service. A further entry, as we have said before, in the baptismal registry will indicate that the person in question has been confirmed. It is incumbent on the bishop or other minister of the Sacrament to see that a pastor, when not present at the Confirmation of his subject, is duly notified of the same. What was said above concerning the proof required to show that one has been baptized is likewise applicable in Confirmation.

The Blessed Sacrament.

Priests who wish to say Mass in churches to which they are not attached should ordinarily be permitted to do so, when they present proper credentials. These for priests of a rite other than the Latin should come from the Congregation for Oriental Affairs. "Si iis litteris careat (sacerdos extraneus) sed rectori ecclesiae de ejus

probitate apprime constet, poterit admitti; si vero rectori sit ignotus, admitti adhuc potest semel vel bis, dummodo, ecclesiastica veste indutus, nihil ex celebratione ab ecclesia, in qua litat, quovis titulo percipiat, *et nomen officium suamque dioccesim in peculiari libro signet*" (Can. 804, § 2). This registration of priests in churches where they celebrate has hitherto been in vogue in Rome and elsewhere. Bishops of course may continue to make their own more stringent regulations in regard to strangers saying Mass in their dioceses. We shall quote only one of the twenty-one canons on stipends: "Qui habent Missarum numerum de quibus sibi liceat libere disponere, possunt eas tribuere sacerdotibus sibi acceptis, dummodo probe sibi constet eos esse omni exceptione majores vel testimonio proprii Ordinarii commendatos" (Can. 838). Permission then is no longer absolutely required to send Masses to priests in other dioceses.

The text is careful to state that any priest, "si *privatim* celebrat," may distribute Holy Communion immediately before or after Mass. The prohibition consequently of giving Holy Communion immediately before or after a High Mass or a collegiate Mass still obtains. The regulations for first Holy Communion make no mention of the specific age required and are in part worded as follows: "*In periculo mortis*, ut sanctissima Eucharistia pueris ministrari possit *ac debeat*, satis est ut sciant Corpus Christi a communi cibo discernere illudque reverenter adorare. *Extra mortis periculum* plenior cognitio doctrinae christianae et accuratior praeparatio merito exigitur, ea scilicet, qua ipsi fidei saltem mysteria necessaria necessitate medii ad salutem pro suo captu percipiant, et devote pro suae aetatis modulo ad Sanctissimam Eucharistiam accedant" (Can. 854). While nothing is here stated specifically concerning the age required

for first Communion, Canon 859 decrees that every one who has reached *the years of discretion, that is, the use of reason*, must observe the Easter precept. The distinction between those who dwell in a house where the Blessed Sacrament is reserved and others, in regard to receiving Holy Communion when ill and not fasting, was based on the convenience of priests rather than on the spiritual needs of the faithful. Rightly then, under the conditions and circumstances laid down by the Sacred Congregation of the Council in 1906 and 1907, Holy Communion may be administered once or twice a week, and not merely once or twice a month as formerly.

The period allotted for the fulfilling of the Easter precept extends now as before over two weeks only, namely from Palm Sunday to Low Sunday inclusive. Ordinaries nevertheless may without special indult, if circumstances require it, permit the Easter Communion any time from the fourth Sunday of Lent to Trinity Sunday inclusive. The special concession granted to the United States by Pope Pius VIII by which the time appointed extends from the First Sunday of Lent to Trinity Sunday has not been withdrawn, and consequently remains in force. Individual bishops possibly, following the instructions of the Second Plenary Council of Baltimore (No. 257), may be tempted to curtail this period in keeping with the general indult granted in the new Code.

Practice had considerably modified the rigors of the old discipline of receiving Communion at Easter time in one's own parish. The present Code merely demands that Catholics be counseled ("suadendum") to make their Easter duty in their own parish, and that if they fulfill this duty elsewhere they should notify their own pastor of the fact (Can. 859). Former decrees of the Sacred Congregation of Rites, the last of 28 April, 1914

relating to Communion on Holy Saturday, have been somewhat modified, since the distribution of the Blessed Eucharist on that day is now permitted during the Mass or immediately after, but not otherwise (Can. 867, § 3).

Penance.

For *validity* as well as licitness, all particular laws or privileges to the contrary notwithstanding, special faculties are required to hear the confessions of religious or novices of any community whatsoever (Can. 876). This law nevertheless does not apply to a confessor who absolves religious in a church or in a public or semi-public oratory (Can. 522). Religious too who are seriously ill, though not in immediate danger of death, may during the continuance of this grave illness confess as often as desired to a confessor who is approved for women's confessions, though he has not been granted special faculties for Religious. A confessor's fitness is to be tested by an examination, unless his knowledge of theology is otherwise evident. Even pastors may be reëxamined if their qualifications for the office of a confessor are later doubted. Bishops or others are counseled not to withdraw or suspend faculties without strong reasons. Any confessor who has *ordinary*, and not merely delegated, *jurisdiction* or power of absolving, may absolve his own subjects anywhere throughout the world. This will apply henceforth to pastors of the United States. The prescriptions of the decree promulgated by the Holy Office on 13 July, 1916, in regard to the reservation of sins are repeated in the Code.

In the chapter on indulgences we note that not only may bishops without special indult grant the Papal Blessing, with plenary indulgence attached, on Easter and on one other great feast of their own choosing during the

year, but this they may do when not actually pontificating, but merely assisting. Prelates *nullius*, vicars and prefects apostolic, even though not bishops, may do the same on Easter only.

When a visit to a church is prescribed as a condition for gaining an indulgence, it may be made any time from noon of the day preceding to midnight of the day itself to which the indulgence is attached. Confession, if made within the eight days that immediately precede the day of indulgence will suffice, while Holy Communion may be received the day before. Moreover, confession and Communion will be sufficient, if not deferred beyond the octave of the day fixed for the indulgence. Subsequent confession and Communion during a like period of eight days after the completion of the exercises will suffice for gaining indulgences that are granted during triduums, missions, etc. Those who are accustomed, unless prevented for sufficient cause, to go to confession at least twice a month, or who are wont, while in the state of grace, to receive daily, though they may miss Holy Communion once or twice a week, may gain all indulgences, except those pertaining to jubilees, without a special confession.

Extreme Unction.

This Sacrament should be administered conditionally when it is doubtful whether the patient has attained the use of reason, or is actually in danger of death, or is still alive. The anointing of the forehead with the prescribed short form suffices in case of necessity. There is an obligation nevertheless, if time permit, of supplying all the usual anointings (Can. 947), and indeed not conditionally, but absolutely (Holy Office, 9 March, 1917). That all the prayers omitted must likewise be supplied cannot be

questioned, since the Ritual (Tit. V, cap. 1, n. 10) insists on it.

Orders.

Ordinarily a bishop may promote to orders his own subjects only. Subjects in this matter are determined by the possession of a domicile in the diocese *una cum origine* or by domicile only, namely domicile *sine origine*. In this latter case an oath to the effect that he intends to remain perpetually in the diocese is required of the candidate for orders, unless incardination through the reception of tonsure has already been effected. This is one of the few cases in law of informal, or presumptive incardination (Cann. 111, 956); another, "ratione beneficii residentialis," is found in Canon 114. A bishop nevertheless may promote to orders without such oath his own subjects who are later to be canonically excardinated and properly received into another diocese. Naturally a promise under oath of perpetual service in a diocese is not demanded before ordination of professed religious. While the formal incardination, so-called, or incorporation in a diocese of lay persons, i. e. of students preparing for the priesthood, has been in vogue for years, and was expressly sanctioned by the Holy See (S. C. C., 24 Nov. 1906), nevertheless there is no reference in the Code to this question. It would appear from Canons 111 and 956 that the formal or documentary incardination of lay persons is not now required, since by promoting another's subject to tonsure or placing him in the clerical state a bishop equivalently adopts into or affiliates the candidate with his own diocese. The Code is silent too in regard to incardination in relation to religious orders or congregations. One who makes a religious profession of perpetual vows, whether they be solemn or simple, is by that act *excardinated* or released from his diocese.

A religious who has made temporary vows, if he leave his community or is secularized, to use the canonical term, reverts to his diocese; which is not the case with a religious who has made *perpetual* vows. This latter must find a bishop who is willing to accept him either on probation or at once. The canonical term of probation is three years. An additional term of like duration is allowable. At the expiration of the first or second period of probation as the case may be, the ex-religious, if not rejected, becomes *ipso facto* affiliated with the diocese whose bishop has received him. (Can. 641). Vicars and prefects apostolic, as well as abbots or prelates *nullius*, if they possess the episcopal character, are placed on an equality with diocesan bishops in all that pertains to ordination. Lacking episcopal consecration, they may nevertheless in their own territory confer tonsure and minor orders not only on their own subjects, but also on others as well who are properly presented. Outside the territory which is subject to them the ordination by them of even their own subjects would be invalid. After the lapse of a year from the date that the diocese becomes vacant, the vicar capitular requires the consent of the cathedral chapter to permit candidates to receive orders. It would appear then that our administrators of vacant dioceses require the consent or majority vote of the diocesan consultors in like circumstances. Within the first year of the vacancy the vicar capitular may promote not only those who are obliged to accept orders by reason of a benefice, which they have received or are about to receive, but likewise anyone else who is destined for some particular office, which, owing to the needs of the diocese, must be filled without delay. As this legislation applies to all administrators of vacant sees, more extended powers will be enjoyed in the United States in this matter than form-

erly. The vicar capitular or administrator is not permitted to concede ordination to one whom the bishop of the diocese has previously rejected. Letters containing permission to receive orders do not lose their force at the death of the one who granted them, or owing to the cessation in any way of his jurisdiction. Such letters, of course, may be revoked.

Candidates for the priesthood should spend at least their theological course in a seminary. Only in peculiar cases for grave reasons, which are binding in conscience on the Ordinary, may he dispense from this regulation. A student who is thus exempt from seminary discipline must be subjected to the watchful care and discipline of a pious and competent priest. The age prescribed for major orders, or for the episcopate, has not been changed. Tonsure is not to be given before the candidate has begun his theological course, subdeaconship not earlier than toward the end of the third year of theology, deaconship not earlier than the beginning of the fourth and priesthood after the middle of the fourth year of theology. Moreover these studies may not be made privately, but in an institution organized for that purpose, and possessing the prescribed course of studies (Cann. 976. 1365).

No matter what custom to the contrary may have existed, tonsure and a minor order, or all four minor orders, or a minor order and subdeaconship must not be conferred on the same day without special permission of the Holy See. Thus the local legislation of the city of Rome has been extended to the universal Church. It is unnecessary to insist on the fact that the reception of two major orders on the same day is impossible. While it is left to the bishop or other Ordinary to determine the period that should elapse between tonsure and the first minor order, and between one minor order and an-

other, a year, either civic or ecclesiastical, must transpire between the last minor order, that of acolyte, and subdeaconship, three months at least between subdeaconship and deaconship, or between deaconship and priesthood, unless in the judgment of the Ordinary shorter terms are needful or beneficial to the Church. Practically, therefore, the bishop determines the time that should elapse between the various orders, since no special indult is required to shorten the periods prescribed. When the *title* of ordination is lost, another must be acquired, unless suitable support in the opinion of the bishop is otherwise provided for. The title *servitii ecclesiae* is granted by general law, where no canonical title is available, except in countries that are subject to the Congregation of the Propaganda. These retain the title *missionis*.

Among the various hindrances to the reception or exercise of orders, known as *irregularities*, we find that *ex defectu* any one is irregular who is infamous *infamia juris*—a judge who has passed sentence of death, one who has accepted the office of public executioner, as well as his voluntary and immediate assistants in the execution of a death sentence. Among others those are irregular *ex delicto* who attempt marriage or merely go through a civil matrimonial contract, while they themselves are bound by lawful wedlock, or major orders, or even simple and temporary religious vows, or who enter into an alliance with a woman who is lawfully married or is under religious vows. An attempt at suicide begets an irregularity, while clerics who in practising medicine or surgery without permission lose a patient by death likewise incur an irregularity. To allow oneself, except in extreme necessity, to be baptized by a non-Catholic is forbidden under pain of incurring an irregularity. This is the only irregularity now arising from baptism. Clerics still in-

cur an irregularity by exercising an act pertaining to a major order which they do not possess or the performance of which is forbidden to them by reason of any penalty, whether corrective or strictly punitive, a personal or local interdict. There is no reference in the Code to any irregularity contracted in war (*ex bello*), either by the clergy or laity. All other irregularities remain practically the same, except that some are now styled mere prohibitions or impediments. Thus, sons of non-Catholics, while their parents remain outside the Church. married men, those who conduct certain affairs of trust, until they are free from such matters, slaves strictly so-called, those who are subject to military service, until said service has been completed, converts till the bishop is satisfied that they have been sufficiently tried, those whose reputation is bad *infamia facti*, as long as in the judgment of the Ordinary this state continues, are prohibited from receiving orders. Irregularities or prohibitions, which are never effected by ignorance of their existence, are multiplied when they rise from different causes, or from repeated voluntary homicide, not otherwise. In a petition for a dispensation in this matter all irregularities and impediments to which the petitioner is subject must be mentioned. Where silence however is due to an oversight or ignorance, a general dispensation will remove all irregularities and impediments, except those that rise from voluntary homicide, and those which have been submitted to a judicial forum. When one or other irregularity or impediment is omitted in the petition intentionally or through bad faith, the dispensation granted is valueless.

Testimonial letters for the period preceding puberty are not exacted by the law. Whether the prescriptions of the Sacred Plenary Council of Baltimore (No. 321), which demand testimonial letters, in a broad sense, from

the bishop of one's origin or place of birth, though the candidate has left the diocese before the age of puberty, are still in force, we hesitate to declare, though we believe not. Where under certain circumstances specified in the text of Canon 994 it is impossible or too difficult to secure all the required testimonial letters, the Ordinary may accept instead the sworn statement of the candidate. That a parishioner is about to receive a major order must be announced once to the congregation at a Mass of precept or at some other function that is frequented by the people, unless the Ordinary in his prudence, for just cause, dispense from this regulation. The law is not applicable to religious of perpetual vows, whether solemn or simple. The Ordinary may, if advisable, prescribe that the announcement be made in other churches also, or he may have recourse at all times, instead of an announcement in the church, to a public notice or bulletin at the entrance to the church. It will be sufficient to leave this proclamation in place for a few days only, but a Sunday or holiday of obligation must intervene. This legislation, as we shall see, approaches that which is now in vogue in regard to matrimonial banns. Unless the Ordinary decide otherwise, the announcement should be repeated, if the ordination is deferred beyond six months. The apparent purpose of this legislation, which is based on the Council of Trent (Sess. 23, cap. 5 de ref.), but which in many places had not been insisted on, is to remind the faithful of their obligation in conscience of divulging any canonical reason known to them why the candidate should not be advanced to orders.

A retreat is required for orders: three full days for tonsure, or minor orders, and at least six for a major order. When one receives more than one major order within six months, however, a retreat of three full days

may, if the Ordinary so decide, suffice for deaconship. Would that the law were a little more specific! What is to be done when a candidate is to receive all three major orders within a few days, as prevailing conditions with us seem not infrequently to demand? [5] Our bishops and seminary authorities would wish at least that a retreat of six days might answer, priesthood being conferred at the end of the period, and the other orders during the retreat. Possibly the Holy See may still be indulgent in this and similar matters. Regular ordination days are retained, yet a bishop may for serious reason confer major orders on any Sunday or holiday, while minor orders may be given also on *doubles*. Any practice to the contrary is blameworthy (Can. 1006). What concessions may still be granted to our bishops in this matter is problematical. A special book in the chancery office will contain a record with all necessary details of the ordinations that take place in the diocese. All documents pertaining to ordination ought likewise to be carefully preserved. A certificate of ordination must be given to each one promoted, who when ordained elsewhere should present this document at his own diocesan chancery, that the necessary data for the prescribed record may be at hand. Furthermore the reception of subdeaconship is made known to the pastor of the church where the newly ordained was baptized, that the fact may be duly noted also in the baptismal registry.

[5] Some of the difficulties alluded to in the text have vanished owing to the withdrawal by the Holy See (S. Cong. Consist., 25 April, 1918) of the indults hitherto enjoyed by our Ordinaries. Bishops, since they do not possess special faculties, must in conferring orders, as in other matters, observe the prescriptions of the Code. It will not be possible then to promote a subject to all three major orders within a few days. Observe also that a dispensation from the age required for priesthood must now be sought directly from the Congregation of the Sacraments, except in the case of religious, who in all matters are subject to the jurisdiction of the Congregation of Religious.

MARRIAGE.

The regulations prescribed by the constitution *Ne temere* are, with a few minor changes, repeated in the Code. It is declared that any promise of marriage whatever is invalid *in utroque foro*, unless it is made in writing with the formalities prescribed. Moreover, even when without any legitimate reason one of the parties to valid espousals refuses to marry, no juridical action or suit tending to the fulfillment of the matrimonial contract is permissible, but merely a petition for reimbursement for any damages that may have been sustained (Can. 1017). When on account of the serious illness of one of the parties it is impossible to observe all the preliminaries demanded by the law, it will suffice ordinarily to have the parties concerned declare under oath that they are baptized and also free from canonical matrimonial impediments. The Sacrament of Confirmation, if it can be done without too much inconvenience, ought to be conferred before marriage on those who have not received it.

The banns are obligatory. A substitute for the proclamation of the banns in the church is a publication of them in a bulletin, at the doors of the edifice, containing the names of the persons who are about to marry. This public announcement must be left in place for at least eight days. The period will necessarily comprise two days on which the faithful are obliged to hear Mass, that they may have ample opportunity of seeing the notice. This regime was inaugurated some nine years ago when the Archbishop of Paris obtained a similar concession on account of the vast number of marriages in the large parishes of his diocese. The basis of the petition was the length of time consumed in reading the names in the church and the consequent tediousness to the listeners, who were for the most part unacquainted

with the contracting parties. The indult which was conceded to Paris was restricted to parishes of 10,000 or more souls, and required that the proclamation be affixed to the doors of the parish church on three successive Sundays or holidays. The present general law is considerably broader. Civil authorities in some countries had much earlier resorted to similar public announcements of proposed matrimonial contracts. In mixed marriages the banns are not published, except with the Ordinary's permission, and then without any mention of the religion of the non-Catholic party. This is not new legislation, as various decrees to the same effect had been previously issued. Not infrequently the publication of the banns is required not merely in different parishes, but likewise in different dioceses. An Ordinary may dispense from the publishing of the banns in other dioceses, as well as in his own, when the parties are of different dioceses. It belongs to the bishop of one or the other spouse in whose diocese the marriage occurs to grant the dispensation. The bishop of either party may grant the required dispensation, if the marriage takes place outside the territory of both. When parents do not know of the proposed marriage of their children under twenty-one years of age or are reasonably opposed to the marriage, the pastor will not proceed before submitting the case to the Ordinary.

In the chapter on impediments we are told that a public impediment is one the existence of which can be established in the external forum; otherwise the impediment is secret. Some impediments are styled *gradus minoris,* others *gradus majoris.* This distinction owes its origin to the reorganization of the Roman Curia by the constitution *Sapienti consilio* and the subsequent rules which were established for the guidance of the Congregation of the Sacraments. The difference between impediments

and dispensation of *less* and *greater degree* is applicable especially when the petition for a dispensation is faulty or defective because of falsehood or suppression of the truth. Thus, Canon 1054 says: "Dispensatio a *minore* impedimento concessa nullo sive obreptionis [falsehood] sive subreptionis [suppression of the truth] vitio irritatur, etsi *unica causa* finalis in precibus exposita *falsa* fuerit."

Canon 1043 is here submitted in its entirety, since it embodies the contents of various former decrees, with the addition also of a point that was under discussion in regard to dispensing *urgente mortis periculo* from the presence at marriage of witnesses:

Urgente mortis periculo, locorum Ordinarii, ad consulendum conscientiae et, si casus ferat, legitimationi prolis, possunt *tum super forma* in matrimonii celebratione servanda, tum super omnibus et singulis impedimentis juris ecclesiastici, sive publicis sive occultis, etiam multiplicibus, exceptis impedimentis provenientibus ex sacro presbyteratus ordine et ex affinitate in linea recta, consummato matrimonio, dispensare proprios subditos ubique commorantes et omnes in proprio territorio actu degentes, remoto scandalo, et si dispensatio concedatur super cultus disparitate aut mixta religione, praestitis consuetis cautionibus.

A slight change in the wording of the text, in regard to affinity, from the previous similar legislation, rendered necessary by the present meaning of the term affinity, will be noted. What is conceded in this Canon to Ordinaries is extended in the next article, in precisely the same circumstances, to pastors, and likewise to other priests who within the prescriptions of the law assist at such marriages, but only when the Ordinary can not be approached. A confessor also, under the same circumstances and conditions, enjoys the same power in sacramental confession, but the dispensation thus granted is

valid in the internal forum only. Canon 1049 grants certain powers of dispensing where two or more impediments affect the same person. For this formerly a special indult was necessary in most cases. Another article (1052) clears up a point which was under discussion, and also makes a new grant: "Dispensatio ab impedimento consanguinitatis vel affinitatis, concessa in aliquo impedimenti gradu, valet, licet in petitione vel in concessione *error* circa gradum irrepserit, dummodo gradus revera existens sit inferior [*remotior* might be clearer], aut licet reticitum fuerit aliud impedimentum ejusdem speciei in aequali vel inferiori gradu." Some few other considerations, not so essential, concerning matrimonial dispensations, are omitted in the present article.

Any non-Catholic ceremony whatsoever in connexion with a mixed marriage, or any appearance before a minister before or after the Catholic ceremony, is prohibited. The second paragraph of the same Canon (1063) repeats former decrees for the guidance of the pastor who is asked to assist at the marriage of one who has lost the faith, or who has joined a prohibited society, or who refuses to go to confession.

The age of legitimate consent to marriage has been raised to sixteen for the male and fourteen for the female. The exception, " unless precociousness supply the defect of age" ("nisi malitia supplet aetatem") has been abrogated. The impediment *raptus* has been somewhat changed, since either the abduction *or* the forcible retention of a woman for the purpose of marriage begets this impediment. Affinity, which now arises solely from a valid marriage, prohibits marriage in all degrees in the direct line, in the first and second degrees only in the transverse or indirect line. Public decency ("honestas publica") arises from an *invalid* marriage ("oritur ex matrimonio invalido sive consummato sive non"), and

likewise from public and notorious concubinage. It renders marriage null in the direct line only, and then in the first and second degrees, between either party and the blood relations of the other. Spiritual relationship begets a diriment impediment in Baptism only (not in Confirmation), and even here it is not as comprehensive as before, since the parents of the one baptized no longer contract an impediment with the one who administers the Sacrament or with the sponsors. Canonical *legal* relationship or adoption will hereafter follow the civil law of the various countries, rendering a matrimonial contract merely illicit or also invalid, as it is illicit or null according to the civil laws of the country in question (Cann. 1059, 1080).

We append the first paragraph of Canon 1070, which we believe constitutes one of the most important decrees of the entire Code: "Nullum est matrimonium contractum a persona non baptizata cum persona *baptizata in Ecclesia catholica* vel ad eandem ex haeresi aut schismate conversa." While thus far no commentary on this text has appeared, it is apparent that this canon distinguishes between a baptism conferred in the Catholic Church and a baptism that takes place outside the Church, or in other words, between a Catholic and a non-Catholic baptism. The Church is legislating for Catholics only. The marriage of non-Catholics *inter se* is not affected apparently by the baptism of the contracting parties. Two unbaptized persons, or two baptized non-Catholics contract marriage validly. Arguing *e contrario* from Canon 1070, the conclusion forces itself upon us that the marriage of non-Catholics, of whom one is baptized while the other is not baptized, is likewise valid. This view is strengthened somewhat by Canon 1119, which puts "matrimonium non consummatum baptizatos vel inter partem baptizatam et partem non baptizatam" on an equality, as far as being

dissolved by papal dispensation or solemn religious profession is concerned. There is question here of a *valid* contract between a baptized and an unbaptized person. The law apparently refers to *all such valid contracts,* whether it is a case of a Catholic who has married with a proper dispensation, or of two non-Catholics. In this latter case Canon 1119 would be applicable if one of the parties later became a Catholic. If the above interpretation of Canon 1070 is correct, it puts an end to much work and worry for diocesan matrimonial courts, especially in the United States.[6] If the marriage of non-Catholics is valid, even though one of the parties be baptized and the other not baptized, such contract of course will remain valid and any matrimonial entanglement later of either husband or wife with a Catholic will be incapable of adjustment during the lifetime of the other consort.

The impediments of error, fear, and servitude or condition remain in force, though they have been placed in the text under the requisites for matrimonial *consent.* Other impediments, which we have not mentioned, remain as before. Matrimonial consent must be expressed in words. Equivalent signs are not sufficient, if the party contracting is capable of speech. The effect of conditional consent is clearly set forth in Canon 1092. General delegated authority to assist at a marriage cannot be given, under pain of nullity, except to assistants in the parish. The priest, as well as the particular marriage at which he is delegated to assist, must be definitely determined (Can. 1096). A marriage will be contracted in

[6] That the interpretation of Canon 1077 is correct there is no doubt. The purpose of the impediment of disparity of religion is to safeguard the faith of the Christian husband or wife. This purpose does not exist when the Christian consort is not a Catholic (or in other words does not profess in their entirety the doctrines of Christ) whose faith has already been impaired. The Church justly then has abrogated this impediment as far as non-Catholics are concerned. This law, of course, is not retroactive.

the presence of the woman's pastor, unless a sufficient cause determine otherwise. Where Catholics are of different rites, their marriage will take place in the presence of the pastor of the husband, and according to his rite, except there be some particular law to the contrary. When one of the parties to a marriage is in danger of death, and it is impossible or extremely difficult to summon a duly authorized priest, the marriage will be valid as well as licit, if contracted in the presence of two witnesses; at the same time, any priest available should be present.

There are four canons in the Code concerning *marriages of conscience* or secert marriages, which may be passed over as not of great importance. There is no season of the year that excludes marriage. The solemnization of marriages is practically reduced to the solemn nuptial blessing, which is found in the Mass *pro sponsis*. The periods during which this blessing is prohibited, have been shortened, extending now from the first Sunday of Advent to Christmas inclusive, and from Ash Wednesday to Easter inclusive. Ordinaries may nevertheless for sufficient reason permit this solemn blessing, even during these closed periods, when liturgical rules do not interfere (Can. 1108). Mixed marriages should not take place in Catholic churches or with Catholic rites. Ordinaries may however, but only in extreme cases, especially to avoid greater evils, allow the celebration of a mixed marriage in a church, with some one of the usual ecclesiastical rites, but never with Mass (Cann. 1102, 1109).

The dissolving of the marriage tie by papal dispensation, by religious profession, or by reason of the Pauline Privilege, the separation of husband and wife "quoad torum, mensam et habitationem" for reasons laid down in canon law, the requisites for rendering effective an invalid matrimonial contract, and other necessary matters,

are stated in the Code clearly, though concisely. A decree of the Holy Office, on 2 March, 1904, which had escaped many, declared that a *sanatio in radice* was impossible when the nullity of the marriage was due to an impediment arising from the divine or the natural law. The Holy Office took up this question *ex professo*, and its decree prevailed over some decisions to the contrary that emanated from the Sacred Penitentiary. Canonists understood consequently that a *sanatio* could not be effected, even from the moment that an impediment, which is based on the divine or natural law, ceased to exist. This opinion is confirmed now by the Code, which says of *such* marriages: "Ecclesia non sanat in radice, ne a momento quidem cessationis impedimenti" (Can. 1139, § 2).

General Observations.

A bishop may in certain specified circumstances convert a church to profane, though not sordid, uses (Can. 1187). "Effusio seminis humani in ipsa" is no longer given among the causes that violate a church, but another is added: "impiis vel sordidis usibus, quibus ecclesia addicta fuerit." The violation of a church does not carry with it the profanation of the cemetery adjoining; neither does the violation of a cemetery affect a church which is situated nearby. The laws regarding the loss of consecration of an altar or altar-stone, chalice and paten, are somewhat more lenient than before. The titular of a non-permanent altar (altaris mobilis aut non fixi) may be changed with the consent of the Ordinary; which is not true of the titular or patron of a church or fixed altar. Parish churches must keep a record of deaths, giving the name and parents or consort (husband or wife) of the deceased, the Sacraments received before death, place and date of burial (Can. 1238). The holidays of obligation of the Latin Church are Christmas, Circumcision,

Epiphany, Ascension, Corpus Christi, Immaculate Conception, Assumption, the feast of St. Joseph, of SS. Peter and Paul, and All Saints' Day. Where however any of these days of precept has been legitimately abrogated or transferred, it cannot be reinstated without consulting the Holy See (Can. 1247). And what is to be done in countries where one of these days was never observed as a holiday of obligation? The Code says nothing further. There is no prohibition to partake of both fish and flesh meat at the same meal, while the law both of fasting and abstinence ceases on Sundays and on holidays *which do not fall in Lent*; likewise after midday ("post meridiem") on Holy Saturday. The Fridays and Saturdays of Lent are days of abstinence (Can. 1252). The Code is silent in regard to all fasting in Advent, except on the Ember Days and Christmas Eve. The fast or abstinence of vigils is not anticipated. If the vigils fall on Sundays or holidays, all fasting or abstinence is abrogated. All who have reached the age of seven years are obliged to abstain, while the law of fasting affects all of either sex who are between the twenty-first (completed) and sixtieth year (commenced). Ordinaries may, without special indult, permit the reservation of the Blessed Eucharist in collegiate churches, and in the principal chapel, whether public or semi-public, of ecclesiastical colleges, religious houses, asylums, hospitals, and similar institutions. The old law which permitted the reservation of the Blessed Sacrament only in cathedrals, parochial churches, and churches of religious, necessitated special indults, in order that our convents and other institutions might habitually possess the Blessed Eucharist. The necessity of renewing these indults every five, or for some institutions every seven years, was annoying. The present concession, long desired, will prove most welcome. The

Blessed Sacrament may be removed from the tabernacle for the night to a safer place, if there be a serious reason, approved by the Ordinary, for so doing; in which case liturgical laws in regard to the use of a corporal, light, etc. must be observed. It is prescribed that the Benediction Host and Sacred Particles be changed *frequently*. Sacred vessels and linens ought not to be handled except by clerics or by those in whose custody they are (Can. 1306). The regulations of Pius X concerning catechizing and preaching, as well as the recent constitution of Benedict XV on preaching, are given in the Code. Missions in parochial churches are prescribed at least every ten years. The regents of seminaries ("deputati") hold office for six years, may be reëlected, and are not removable except for serious reason. Each committee ("coetus deputatorum, alter pro disciplina, alter pro administratione bonorum temporalium") is made up of two priests, chosen by the bishop with the advice of the cathedral chapter or diocesan consultors. Certain ones, for instance the vicar general, the rector or procurator or ordinary confessors of the seminary, are not qualified for this office. Details are given in regard to the tax, and method of levying it, for the maintenance of diocesan seminaries. The text insists on a course of at least two full years in Philosophy and four in Theology. At least each of the branches of Sacred Scripture, Dogmatic Theology, Moral Theology, and Ecclesiastical History requires its own distinct professor. Catholic children are forbidden to attend neutral or mixed schools. The Ordinary *alone* is to judge, in keeping with various instructions of the Holy See, in what circumstances and under what safeguards against perversion, such attendance may be tolerated.

Permission to publish books may be given by the author's Ordinary, or by the Ordinary either of the place

where the book is *published* or of the place where it is *printed.* If any of these refuse an imprimatur, this fact must be made known to either of the others who is approached for permission to publish the book in question (Can. 1385, § 2). When however a superior finds it inadvisable to allow the publication of a book, he should on request, unless grave motives militate against it, make known his reasons to the author (Can. 1394, § 2). Clerics need permission to publish books even on profane subjects, or even to contribute articles to newspapers, periodicals, or reviews, religious or secular. Diocesan consultors, when assuming office, must make the prescribed profession of faith before the Ordinary or his delegate and the other consultors. Professors of Theology, Canon Law, and Philosophy in seminaries need not necessarily repeat the profession of faith at the beginning of each scholastic year.

Our new legislation has eighty canons concerning ecclesiastical benefices, a half dozen on hospitals, asylums and similar institutions, and fifty-seven in regard to temporal goods. These last contain some interesting details in regard to *prescription.* A board, comprising the bishop as president and at least two others, chosen with the advice of the cathedral chapter, is prescribed for the administration of temporal goods, "nisi jure vel consuetudine peculiari jam alio aequivalenti modo legitime fuerit provisum" (Can. 1520). Some modifications of former canons, relating especially to the values involved, have been introduced in relation to *alienation* of church property. These will have little practical application in the United States because of our special indult in this matter. When the divine law is not opposed and her own code is silent, the Church adopts local civil laws in all that pertains to the regulation of contracts (Can. 1529).

II.

THE FIRST BOOK OF THE NEW CODE.

THIS section comprises six titles, namely, Ecclesiastical Law (Tit. I), Customs (Tit. II), Reckoning of Time (Tit. III), Rescripts (Tit. IV), Privileges (Tit. V), Dispensations (Tit. VI).

I. Ecclesiastical Law in General.

The Code plainly states that the laws contained therein are obligatory only for Catholics of the Latin Rite, except in those points which of their very nature affect also the Oriental Church. This ruling is not new; it has obtained for many centuries. On account of the great diversity in manners and customs between the peoples of the East and those of Europe and other countries Christianized by missionaries of the Latin Rite, the Holy See does not wish to make them subject to the same laws as the Catholics of the Latin Rite. The laws on questions of faith and morals naturally bind all Catholics in union with the See of St. Peter.

All liturgical laws heretofore published retain their force, except those that are explicitly corrected in the Code (Can. 2).

Special agreements or concordats made between certain nations and the Holy See are not changed by the new Code.

Acquired rights and privileges and indults which have been granted by the Holy See to individuals or organizations, if they are still in use and have not been revoked, remain in force unless they are explicitly revoked in the Code (Can. 4).

Customs both particular and universal at present in existence are abolished only where the Code expressly says so. Centenary and immemorial customs may be tolerated if the bishop judges that they cannot prudently be abolished. If, however, the Code expressly condemns such customs, they can no longer lawfully be retained (Can. 5).

As regards laws published before the Code came into force, the general rule is that all former laws, whether particular (for instance, for a certain country, Religious Order, etc.), or universal, which *conflict* with the laws of the Code, are hereby abolished, unless the Code explicitly rules otherwise in respect of any special law.

Canons of the Code which repeat former laws exactly as they were before, must be interpreted by the authority of the old law and the approved and accepted commentaries of canonists. Canons which agree only in part with the former law must be interpreted like the former law in those points in which they agree with the old law; in the points in which the new law differs from the former regulations they must be judged by their wording and context. When it is doubtful whether a law of the new Code differs from the old law, one must not deviate from the former law.

All former ecclesiastical penalties, whether spiritual or temporal, medicinal or vindictive, *latae* or *ferendae sententiae*, of which the Code makes no mention, are abolished.

All other disciplinary laws which have been in force up to the present time cease to be binding, unless they are explicitly or implicitly found in the new Code. The laws found in approved liturgical books, however, remain in force (Can. 6).

These canons are of importance for the solution of serious questions about laws, both universal and particular, in force prior to the date on which the new Code became obligatory. The Code, it will be noticed, annuls all previous laws, whether for the universal Church or for particular churches and organizations, which are *opposed* to its canons, unless exception is explicitly made in the Code for particular laws on certain points. Thus, for instance, the Code allows particular regulations in regard to holidays of obligation and for fast and abstinence days to remain in force, though these are at variance with the new canons.

Question may arise about particular laws issued by authorities subordinate to the Holy See, for example, those of the Councils of Baltimore. Are they abolished? If they are opposed to the laws of the Code, they are certainly annulled, unless the Code expressly sanctions them.

Particular laws that are not in opposition to the laws of the Code present a difficulty. Number 6 of Canon 6 states that all other disciplinary laws which have heretofore been in force lose binding power unless they are contained either explicitly or implicitly in the new Code. Does this ruling apply to the universal laws of the Church? Or does it apply to both particular and universal laws? It is not likely that the Code intends to abolish diocesan laws or those of national or provincial councils when they are not in opposition to the new Code. This Canon is made clearer by Canon 22, from which it appears quite certain that such particular laws are not annulled.

Canon 9 states that papal laws will be promulgated by the official organ of the Holy See, the *Acta Apostolicae Sedis*, unless special promulgation is ordered, and that

these laws will begin to be obligatory three months from the date of the issue of the magazine containing the law. After this space of time no cleric may claim ignorance of the law, unless he bring proof that it was impossible for him to have gained knowledge of the law in question.

Laws are considered to be territorial, and hence do not bind outside the territory for which they are passed, unless the terms of the law indicate that they are personal also (Can. 8). The general laws of the Church bind all the faithful for whom they were passed in any part of the world. Particular laws for a country or a diocese bind, as a rule, only so long as one stays in the country or diocese in question. Those who are on a journey or who stay for a while in a given place, without having there a domicile or quasi-domicile, and who are known in law as *peregrini*, are not bound by the special laws of their own diocese or country, unless the transgression committed outside their own territory injures someone in their own diocese, or unless the laws transgressed are not only territorial but also personal. *Peregrini* are furthermore free from the observance of the particular laws of the diocese in which they are sojourning, except in those laws that are made for public order or that have to do with the formalities of contracts and similar transactions. Dispensations from the common laws of the Church given to dioceses or countries may be enjoyed by travellers in such places. Those who have no domicile or quasi-domicile anywhere, that is, *vagi*, are bound to observe both the common law and the particular law in the countries and dioceses in which they happen to be (Can. 14).

The laws, even those that annul an action or inhabilitate a person to perform certain acts validly, do not bind when there is a *dubium juris*, that is to say, a doubt

arising from the meaning or extent of the law itself. *In dubio facti*, that is to say when there is a doubt as to the fact on which the law is based, for instance, when after due investigation it remains doubtful whether certain persons are really blood relations, the Code rules that the bishop has the right to dispense in all cases in which the Roman Pontiff ordinarily grants dispensations.

Ignorance of laws which annul an action or inhabilitate a person to act does not excuse from these laws, unless the Code expressly allows ignorance as an excuse. Ignorance or error concerning laws or penalties, or the excuse of ignorance of one's own actions or the notorious action of another, is not as a rule presumed by the law. But where there is question of another's action that is not notorious, ignorance is presumed until the contrary is proved (Can. 16).

A more recent law issued by competent authority abolishes a former law if this is expressly stated, or if the new law is directly contrary to the old, or if the new law makes over the entire matter of the old law. Apart from particular laws that are opposed to the new Code, the general law does not revoke the statutes of particular places and for particular persons, unless this is explicitly stated (Can. 22).

Whenever it is doubtful whether a former law has been revoked, revocation is not to be presumed. The old laws are rather to be reconciled with the new, as far as possible. It is an ancient and well established principle of Canon Law that the correction of laws is considered odious, and therefore existing laws are to be considered amended or abolished only when the new law is incompatible with the old, or the legislator indicates his intention to abrogate the former law.

Precepts intended for individuals oblige those to whom they are given, but they cannot be urged in a canonical trial and they lose their binding force with the passing out of office of the one who made them, unless they have been imposed in legal form or before witnesses (Can. 24).

II. Customs.

In order that a custom may have the force of law, it must have the sanction of the competent ecclesiastical superiors (Can. 25). Only those communities, dioceses, religious orders, etc., that are governed by laws, can introduce customs which have the force of law. No custom can abrogate or modify the divine law, either natural or positive. In order that a contrary custom may have the power to change Church laws, it must be (1) reasonable, and (2) lawfully prescribed by the usage of full forty successive years. Against a law of the Church which contains a clause forbidding contrary customs for the future, only a reasonable custom of a hundred years' standing or more can attain the force of law. A custom which is explicitly forbidden in law is not considered reasonable (Can. 27).

Customs *praeter jus*, that is to say, such as are not against a law, but outside it, and which have been knowingly introduced in a community with the intention of binding its members, become law if they are reasonable and lawfully prescribed by usage of forty continuous and complete years (Can. 28).

A new law contrary to an established custom *ipso facto* revokes that custom, that is, a general law revokes general customs, a particular law revokes contrary customs in the diocese or district for which the law was enacted. A general law, however, does not *ipso facto* revoke a lawful custom of particular countries or dio-

ceses, for the new Code upholds the old rule that "generi per speciem derogatur", that is, the general law is modified by the particular law. Likewise, customs of a hundred years' standing or from time immemorial are not *ipso facto* revoked by a contrary law, but only when such customs are explicitly forbidden.

There was no precise text of law before the present Code to determine the number of years required for a custom to become law. While the Decretals gave legal consent to customs that were reasonable and lawfully prescribed, they did not specify the length of time needed for such prescription. The new Code gives a uniform rule for customs *contra* as well as *praeter legem.*

III. Manner of Reckoning Time.

Apart from the liturgical laws, time is to be reckoned according to the following rules, unless the canon explicitly makes an exception.

1. A day consists of twenty-four hours, to be counted from midnight to midnight; and a week consists of seven days.

2. A month in law means a period of thirty days; a year, 365 days, unless the month and year are said to be taken according to the calendar (Can. 32).

In reckoning the hours of the day the common custom of the place is to be observed, but in the private celebration of Holy Mass, in the private recitation of the Divine Office, in receiving Holy Communion, and in the observance of the law of fast and abstinence, one may follow also the local true time or the mean time, or the legal or any other of the several ways of marking the time for midnight and midday. Naturally, midday and midnight fall a little earlier or later as one goes East or West. For business purposes the local natural or true time is not

very practical, wherefore so-called Standard time is followed in the United States, by which we have four zones, or Eastern, Central, Mountain, and Pacific Standard time, each making a difference of one hour or a total difference of three hours between Eastern and Pacific time. The difference between the Standard time and the local true time varies with the location of the towns and cities in the respective zones. Thus it may be twelve o'clock midnight by Standard time while according to the local true time it is twenty minutes or a quarter to twelve. The Code sanctions the following of such difference—for instance, in the fast, the recitation of the Divine Office, etc.

The time for determining the obligation arising from contracts is to be reckoned according to the rules of the civil law of each country, unless a special agreement has been made on this point.

If the month or the year is designated in law by its proper name or its equivalent, for example, "the month of February", "the following year", they are taken as in the calendar.

If the terminus *a quo* is neither implicitly nor explicitly assigned, for instance, suspension from the celebration of Holy Mass for a month or for a year, or three months' vacation in a year, and the like, the time is to be calculated from moment to moment, and if, as in the first example, the time is continuous, the month and year are taken as in the calendar; if the period of time is intermittent, a week means seven days, a month thirty days, and a year three hundred and sixty-five days.

If the time consists of one or several months or years, one or several weeks, or several days, and the terminus *a quo* is explicitly or implicitly fixed, the following rules obtain: 1. the month and year are taken as in the calendar; 2. if the terminus *a quo* coincides with the beginning

of the day, for example, two months of vacation from the fifteenth of August, the first day shall be counted in the number of days and the time expires with the *beginning* of the last day of the same number; 3. if the terminus *a quo* does not coincide with the beginning of the day, for instance, the fourteenth year of age, the year of novitiate, eight days from the vacancy of a bishopric, ten days for appeal, etc., the first day shall not be counted and the time expires when the last day of the same number is *ended*; 4. if the month should not have the same number of days, for example, one month from the thirtieth of January, the time expires either with the beginning or the end of the last day of the month, as the case may be; 5. if there be question of actions of the same kind to be repeated at stated intervals, for instance, a three-year term from the taking of temporary vows to the taking of perpetual vows, three or more years between elections, etc., the time expires on the same day of the month on which the period began; but the new action may take place any time during the day. The fact, therefore, that a profession took place early in the morning or late in the day does not oblige one to wait for the same hour for the renewal of vows. The same holds in case of elections, etc.

The term *tempus utile* means that the time for the exercise or prosecution of one's rights does not elapse if one is ignorant of the rights or cannot act at the time. The term *tempus continuum* in law means a space of time that does not suffer any suspension by reason of one's ignorance or inability to act.

IV. Rescripts.

The general principles concerning rescripts by which dispensations and various other favors are granted by the Holy See are summed up under this title of the Code.

Attention is here directed to the more important regulations that are either in part or entirely new.

Canon 43 states that, should one of the Roman Congregations or Offices refuse a favor asked of them, the same favor cannot be asked of and granted by any other of the Sacred Congregations, or even by one's own bishop who may have delegated faculties, unless the Sacred Congregation of which the favor was first asked gives its consent.

The granting of a favor that was first asked of and refused by the vicar general and then obtained from the bishop, without mentioning the fact that application had first been made to the vicar general and refused, is *invalid.* A favor that has been refused by the bishop cannot validly be granted by the vicar general, even though the petitioner tells him of the bishop's refusal.

Rescripts are no longer considered invalid on account of an error in the name of the person to whom or by whom the favor is granted, or a mistake in the place of residence, or a mistake concerning the subject of concession, so long as, in the prudent judgment of the bishop, there is no doubt concerning the person and the matter of the favor.

Rescripts which are granted directly to the petitioner (*in forma gratiosa*), without intermediary, must be shown to the bishop only when it is so stated in the rescript itself, or when there is question of public affairs, or when the bishop has a right to pass upon the conditions requisite for the favor—for instance, in the case of the privilege of having Mass said in a private house, in which case canon law leaves it to the bishop to judge whether the place is suitable for the purpose.

By a contrary law favors granted through a rescript are not revoked, unless it is otherwise stated in the law, or unless the law was made by the superior of the grantor.

Vacancy of the Holy See or of a bishopric does not invalidate rescripts given by the deceased pontiff or bishop, unless the terms of the rescript state otherwise, or unless the rescript names a delegate to grant the favor to the individual mentioned and the delegate has not yet begun to exercise his powers. As soon as the rescript has been presented to the individual so delegated the case is opened and he can act even though the pope or bishop granting the favor has retired from office.

V. Privileges.

Privileges can be acquired through direct concession by the competent authority, by communication of privileges, and also by legitimate custom and prescription. Canon 613 states that communication of privileges between religious orders is revoked, and that each order shall have only what is conceded by the Code, or the favors that have been directly granted it by the Holy See.

Faculties that are given habitually or *in perpetuum*, or for a certain length of time, or a certain number of cases, are counted among the privileges *praeter jus*. This consideration allows a liberal explanation of such faculties; whereas, if they were to be considered *contra jus*, their interpretation would have to be strict.

Only by a general law can the privileges contained in this Code be revoked. Privileges do not become void by the death or loss of office of the grantor, unless they are granted with the clause *ad beneplacitum nostrum*, or an equivalent phrase.

VI. Dispensations.

A dispensation is a relaxation of the law in special cases. From the common law of the Church none can dispense except the Holy See, or someone delegated by

the Holy See. Without special faculties the bishop can dispense only when recourse to the Holy See is difficult and the case is urgent and of such a nature that the Holy See is likely to dispense.

The bishop and other ordinaries of dioceses, vicariates apostolic, etc., can dispense from diocesan laws, and laws of provincial and national councils; but they cannot dispense from laws published by the Holy See for particular countries or dioceses.

Pastors may for reasonable cause dispense individuals from the obligation of the fast and abstinence and from the law forbidding servile work on Sundays and holidays of obligation.

III.

THE SECULAR CLERGY.

THE second book of the Code regards clerics and is divided into two parts, the first of which treats of the secular clergy, the second of the religious.

I. General Remarks.

The opening canons give the general principles of law concerning the subjects of the Church. Canon 87 states that by baptism one becomes a subject of the Church, but leaves open the controversy whether baptism that is only probably valid makes one a subject of the Church. It seems to be the practice of the Church to regard such individuals as her subjects so long as the invalidity is not clearly established and the fact of baptism is certain. Many marriage cases decided by the Holy See bear out this interpretation.

Canons 88 and 89 determine who in the law of the Church is considered of age and what is understood by *puber* and *impuber* and infant. These terms are explained in the same sense as in the past.

Canon 90 states that by *locus originis* is meant the place where one was born and where the father, or in case of an illegitimate child the mother, had a domicile or quasi-domicile at the time of birth. In the case of converts also, the *locus originis* is the place of birth. Hence the opinion of canonists who held that the place of baptism of adults might be considered as their *locus originis* must be corrected.

Rules concerning domicile are slightly different from former regulations on the point. Canon 92 ordains that

a domicile is acquired by residence in a parish or quasi-parish, or at least in a diocese, vicariate apostolic, etc. This is the first time that the common law of the Church has expressly recognized a diocesan domicile. The conditions for acquiring one of the two kinds of domicile are either actual residence with the intention of staying there for good, or a residence of ten years complete. A quasi-domicile is acquired by actual residence with the intention of staying the larger part of the year, or by actually having stayed for the greater part of the year. Domicile or quasi-domicile in a parish or a quasi-parish is called parochial; in the diocese or vicariate, diocesan. A minor (from seven years of age to twenty-one) can acquire a quasi-domicile of his own, as can also the wife; but at the same time they continue to have the domicile of parents and husband respectively.

Through domicile or quasi-domicile each of the faithful gets his proper pastor and ordinary. Those who have only a diocesan domicile are subject to the pastor of the place where they actually reside.

Canon 96 has important rules for counting the degrees of blood relationship. Consanguinity is traced by lines of descent and degrees. In the direct line there are as many degrees as there are generations, or, in other words, as many degrees as there are persons, not counting the stipes or head of the line. In the side lines there are as many degrees as there are generations in one line, if the distance from the common parent is equal; if the distance is not equal, there are as many degrees as there are generations in the longer line.

Concerning the actions of so-called moral persons, namely, cathedral chapters, religious communities, and other recognized bodies of the Church, Canon 101 gives important rules touching the manner of voting on matters

subject to the ballots of the community. An absolute majority of votes decides; and if no majority is reached in the first two ballotings, the relative majority of votes in the third balloting is sufficient to effect an election. If the votes given to several candidates are even in the third voting, the one presiding at the elections can decide the election by adding his ballot for one of the candidates. The Code permits special laws on election to remain in force.

When the law states that the superior needs the consent or the counsel of certain persons, the superior acts *invalidly* unless he has the consent of the majority where consent is required. Where the law requires him to act by the counsel of certain persons, for example, "de consilio consultorum," "audito capitulo, parocho," etc. it is necessary for the *validity* of the action that he consult these persons, though he need not follow the vote of the majority (Canon 105).

II. Incorporation of Clerics.

1. By the reception of the First Tonsure a cleric is ascribed to a diocese or incorporated therein (Canon 111).

2. If one obtains a parish or other benefice requiring residence in another diocese and he has the written consent of his bishop or written permission to leave the diocese for good, the priest is held to be *ipso facto* incorporated in the new diocese by getting the parish (Canon 114).

3. Excardination from one diocese and incardination in another, is ordinarily to be done in writing by the respective bishops, and the cleric must take the oath before the bishop of the new diocese that he wants to be affiliated with.

III. Rights and Duties of Clerics.

Clerics are by right exempt from military service and such public offices as are unbecoming to the clerical state (Canon 121).

The bishop has the duty to see to it that the members of his clergy devote daily some specified time to meditation, that they visit the Blessed Sacrament, say the beads, and make an examination of conscience (Canon 125).

Once in three years at least all secular priests shall make a retreat (Canon 126). It goes without saying that the bishop has power to call them to retreat oftener if he wishes.

Though they be pastors, priests are to undergo an examination each year for the first three years, according to the manner prescribed by the bishop. He may also exempt them (Canon 130). The Third Council of Baltimore (No. 187) requires our priests to pass an examination for five years after their ordination and this law is not abolished by the Code, since it does not stand in opposition to what the Code prescribes.

All priests, both secular and regular, who have the care of souls as pastors or assistants, must attend the diocesan conferences. If the conferences prescribed by the *jus regularium* are not held in their own houses, all the other priests of the religious Orders who have the faculties of the diocese must attend the diocesan conferences (Canon 131).

All clerics in major Orders are bound to recite daily the Canonical Hours of the Divine Office, according to their proper and approved liturgical books (Canon 135).

Clerics are to wear a becoming ecclesiastical habit, according to the custom of the various countries and the diocesan regulations (Canon 136).

Clerics shall not volunteer for military service, unless they do so with the permission of the bishop in countries where they are forced to serve, in order the sooner to put in their period of service. Clerics must not take part in or help in any way in internal revolts and disturbances of public order. Clerics who in violation of the above law volunteer for military service, thereby forfeit their clerical standing (Canon 141).

Clerics are forbidden either by themselves or through others to engage in any business or secular occupation, whether for their own profit or for that of others (Canon 142).

Clerics, even though they have no benefice or office requiring residence, are not to absent themselves from their diocese for a notable time without permission of the bishop (Canon 143).

Clerics who serve in another diocese with the consent of their bishop unless excardinated, may be recalled for a just reason. A bishop may for a just reason deny a priest, only temporarily admitted to his diocese, permission to continue therein, unless he has given the visitor a parish, in which case the latter is considered incardinated (Canon 144).

IV. Ecclesiastical Offices.

An ecclesiastical office in the wide sense of the word is any employment that has a spiritual purpose. In the strict sense an ecclesiastical office means a stable position which is created either by God Himself or by the Church and conferred according to the rules of canon law and which carries with it some participation in ecclesiastical power either of Holy Orders or of jurisdiction.

In law the word office is accepted in the strict sense unless the context clearly shows the contrary (Canon 145).

An ecclesiastical office cannot be obtained without a canonical appointment. By ecclesiastical appointment is understood the conferring of an ecclesiastical office by the competent ecclesiastical authority, according to the sacred canons (Canon 147).

Offices that carry with them the care of souls either in the external forum or in that of conscience, cannot validly be given to clerics who are not yet ordained priests (Canon 154). This regulation is new. According to the old law a cleric could be appointed pastor of a parish before he was ordained priest.

An office that becomes vacant either through renunciation or by the sentence of the ecclesiastical court cannot validly be conferred by the bishop who accepted the resignation or gave the sentence, on his relations in the second degree inclusive, nor to a cleric in his service. Relations to the second degree and clerics in the service of the one resigning the office are likewise barred from obtaining said office (Canon 157).

Appointment to any office should be made in writing (Canon 159).

In the election of the Pope the Constitution of Pope Pius X *Vacante Sede Apostolica*, 25 Dec. 1904, is exclusively to be followed. In election to other offices the general rules given in the Code and the particular laws that have been legitimately passed are to be observed (Canon 160). There are but few dioceses where the cathedral chapter has the right of electing the bishop of the diocese. In some countries the government has by concession of the Church the right to propose two or three candidates to the Holy See, one of whom must be appointed bishop, unless the Holy See find canonical unfitness in all the candidates proposed. The general rule is that the Holy See freely appoints the bishops. Though

for the sake of information the Supreme Pontiff may allow the bishops and priests to propose the names of those whom they think best suited for the office, the Holy Father is free to appoint as bishop whomsoever he wishes.

V. Ordinary and Delegated Jurisdiction.

By ordinary power is meant such as goes by right with the appointment to an office. Delegated power is such as may be committed to a cleric by his superior. He who has ordinary power can delegate it to another, either totally or in part, unless the law expressly restricts the power of delegation in certain matters. One who has been delegated by the Holy See to exercise powers of jurisdiction can subdelegate another, either for one act or habitually, provided subdelegation has not been forbidden, or provided the person delegated was not chosen by the Holy See *ob industriam personae*, i. e. on account of special qualifications for the matter committed to him.

He who has received delegation from an authority inferior to the Holy See *ad universalitatem negotiorum*, i. e. for all matters over which the one delegating has charge or at least all cases of a certain kind, e. g. all marriage cases, can subdelegate in individual cases. If the delegation is not universal, the subdelegation is allowed only by special permission of the superior. In matters, however, that do not require jurisdiction, the delegate can employ another to act for him without express permission of the superior.

No person subdelegated can in turn delegate another to act for him unless this has been expressly granted by the superior (Canon 199).

The power which has been granted for the internal forum can be used also outside the confessional, unless it is explicitly restricted to the *sacramental* forum, i. e. sacramental confession (Canon 202).

VI. Clerics Individually.

Each diocese shall be divided into distinct territorial sections and each section shall have its own church to which the Catholic population of the district shall be assigned. Such a church is presided over by a rector as the proper pastor for the necessary care of souls.

In like manner shall the vicariates and prefectures apostolic be divided where it can conveniently be done.

The parts or sections of a diocese are called parishes; those of vicariates and prefectures apostolic are called quasi-parishes and the priests assigned to these latter are known as quasi-pastors.

This law of the new Code recognizes no distinction of pastoral titles. For many centuries past the inamovability from office and the endowment of the church were considered essential to a pastorate in the strict sense of the word. In more recent decrees concerning pastors there has been a noticeable tendency not to insist so much on the irremovable feature of the office. The condition of the Church in many countries at the present time makes it impossible to have a benefice connected with the parish.

Section 4 of Canon 216, following up logically the idea of dividing dioceses into territorial sections, called parishes, does away in future with the establishment of parishes according to nationalities, without special permission from the Holy See. In the United States and in many other countries where through immigration people of different speech reside in a given town or city, it will be necessary to have churches where the people can be instructed in their own language. The purpose of this new regulation is not to eliminate such churches, but rather to bring about uniformity of discipline by having all the district under one pastor who will have charge of

all the faithful in the district and through his assistants have the various churches attended to. With regard to the churches of foreign languages already established nothing is to be changed without consulting the Holy See.

Vicars General are given the privileges and the insignia of titular protonotary apostolic for the time of their office. They are not monsignori or domestic prelates, however. The cassock of a titular protonotary is black, with a silken sash on the left side, having two tassels. They wear the rochettum and black mantle. At Mass and other solemn functions they may use the "Palmatoria" or extra candle used by bishops (Canon 370).

The diocesan consultors take the place of the cathedral chapter and are the bishop's official advisers. The rights and duties which the canons of the Code give to the cathedral chapter in the administration of the diocese are accorded likewise to the diocesan consultors (Canon 427). The status of the diocesan consultors has been raised considerably and from now on they take an important place in the diocese. Their consent will be necessary for the valid action of the bishop in many important affairs. Though the Third Council of Baltimore prescribed that each diocese should have diocesan consultors, and also indicated the affairs in which the bishop had to ask the advice of the consultors, their vote was only consultive and the bishop could act validly against the vote of the majority. In the new legislation they are made equal to the cathedral chapters and the canons of the Code indicate here and there when the cathedral chapter must act. The same rules hereafter apply to the diocesan consultors.

Irremovable parishes cannot be made removable without permission from the Holy See. The removable

parishes can be made irremovable by the bishop with the advice of the cathedral chapter or the consultors. The new parishes should be made irremovable unless the bishop, after advising with his consultors, should on account of the peculiar circumstances of the place or the people decide to establish them as removable (Canon 454).

In countries where the conferring of parishes is made by a concursus, either according to special laws or the rules of Pope Benedict XIV, this method is to be continued until the Holy See provides new regulations (Canon 439).

Strictly parochial functions are the following: (1) Solemn Baptism, (2) bearing the Blessed Sacrament publicly to the sick within the parish, (3) giving Viaticum whether privately or publicly, and Extreme Unction, (4) announcing the ordination of candidates from the parish, proclaiming the banns of marriage, assistance at marriages, giving the nuptial blessing, (5) the funeral of a parishioner, unless the deceased himself elected to be buried from another church, (6) blessing the houses on Holy Saturday or on other days according to various local customs, (7) blessing the baptismal water on Holy Saturday, conducting processions outside the church, other solemn functions outside the church (Canon 462).

These are the strictly parochial functions which the pastors have an exclusive right to perform or delegate others to perform. As the reader will notice, neither First Holy Communion nor private Communion to the sick, is mentioned among the strictly parochial rights.

The bishop can for a just and serious reason exempt from the charge of the pastor religious communities and pious institutions which are within the territory of a parish and have not by law the right of exemption (Canon 464).

Pastors are entitled to two months of vacation each year, either continuously or with interruptions; but the bishop can for grave reasons shorten or lengthen the time of vacation. In all cases of absence, however, for more than one week, the pastor requires the permission of the bishop, and the pastor must provide a substitute approved by the bishop (Canon 465).

Pastors are charged to apply Holy Mass for their parishioners on all Sundays and holidays of obligation, not excepting those that are suppressed. Quasi-pastors are expected to apply Mass for their congregation at least on the greater feasts of the year (Canon 466). As the rectors of parish churches in the United States are by virtue of the laws of the Code pastors in the strict sense of the term, they are obliged to apply Mass on the days specified. This is a new and serious obligation. The list of holidays to be followed in the application of Mass is the catalogue of feasts published by Pope Urban VIII. The list of days on which pastors are obliged to offer the Mass for their charge without accepting a separate stipend, is appended:

1. Dies Dominicæ per annum.
2. Circumcis. D. N. J. C. 1. Jan. (fest. ex præc.)
3. Epiphaniæ D. N. J. C. 6. Jan. (fest. suppr.)
4. Purif. B. M. V. 2. Febr. (fest. suppr.)
5. S. Matthiæ Ap. 24 Febr. (fest. suppr.)
6. S. Joseph C. 19. Mart. (fest. suppr.)
7. Annunt. B. M. V. 25. Mart. (fest. suppr.)
8. Fer 2. et 3. Resurr. Pasch. D. N. J. C. (fest. suppr.)
9. Ss. Philippi et Jacobi App. 1. Maj. (fest. suppr.)
10. Invent. S. Cruc. 3. Maj. (fest. suppr.)
11. Ascens. D. N. J. C. (fest. ex præc.)
12. Fer. 2. et 3. Pentec. (fest. suppr.)
13. Corp. Christi. (fest. suppr.)
14. Nativ. S. Joann. Bapt. 24. Jun. (fest. suppr.)

15. Ss. Petri et Pauli App. 29. Jun. (fest. suppr.)
16. S. Jacobi Ap. 25. Julii. (fest. suppr.)
17. S. Annæ 26. Jul. (fest. suppr.)
18. S. Laurentii Mart. 10. Aug. (fest. suppr.)
19. Assumpt. B. M. V. 15. Aug. (fest. ex præc.)
20. S. Bartholomæi Ap. 24. Aug. (fest. suppr.)
21. Nativ. B. M. V. 8. Sept. (fest. suppr.)
22. S. Matthæi Ap. 21. Sept. (fest. suppr.)
23. Dedic. S. Michael. Arch. 29. Sept. (fest. suppr.)
24. Ss. Simon. et Jud. App. 28. Oct. (fest. suppr.)
25. Omnium Sanct. 1. Nov. (fest. ex præc.)
26. S. Andreæ Ap. 30. Nov. (fest. suppr.)
27. Immac. Conc. B. M. V. 8. Dec. (fest. ex præc.)
28. S. Thomæ Ap. 21. Dec. (fest. suppr.)
29. Nativ. D. N. J. C. 25. Dec. una Missa. (fest. ex præc.)
30. S. Stephani 26. Dec. (fest. suppr.)
31. S. Joannis Evang. 27. Dec. (fest. suppr.)
32. Ss. Innocent. 28. Dec. (fest. suppr.)
33. S. Silvestri Pap. C. 31. Dec. (fest. suppr.)

Pastors and any other priests assisting the sick in their last hour have the faculty to give the Papal blessing with a plenary indulgence to be gained at the moment of death. The formula of prayer of the Roman Ritual must be used for this blessing (Canon 468).

IV.

RELIGIOUS ORDERS AND CONGREGATIONS.

IN the first place the Code defines the exact meaning of the various terms used in this treatise on religious associations.

1. *Religio* means a society, approved by legitimate ecclesiastical authority, whose members strive after evangelical perfection by living according to the special laws governing the society and by taking public vows, either perpetual or temporary, to be renewed, if temporary, when the time for the vows expires.

2. *Ordo* denotes a religious organization in which solemn vows are taken; *Congregatio monastica* is a combination of several independent monasteries under one superior; *Religio exempta* means a religious organization, of either solemn or simple vows, that has been withdrawn from the jurisdiction of the Ordinary of the diocese; *Congregatio religiosa*, or simply *Congregatio*, signifies a religious body in which only simple vows are taken, which vows may be either perpetual or temporary.

3. *Religio juris pontificii* is a religious organization which has received from the Holy See either approval or at least the *decretum laudis*. *Religio juris dioecesani* is a religious organization which has been instituted by the Ordinary and has not yet obtained the *decretum laudis* from the Holy See.

4. *Religio clericalis* means a religious organization consisting for the most part of priests; otherwise it is called *religio laicalis*.

5. *Domus religiosa* signifies the residence of any religious organization; *domus regularis* is the house of an

Order; *domus formata* means a religious house in which reside at least six professed members, of whom, if there is question of a clerical religious organization, four at least must be priests.

6. *Provincia* is a combination of several houses of religious under one superior constituting a part of the religious Order or Congregation.

7. *Religiosi* are those who have taken vows in any religious community; *religiosi votorum simplicium* are those who have taken vows in a religious *Congregation; regulares* are the professed members of an *Order; sorores* are women who have taken *simple vows; moniales* are religious women with *solemn vows*, unless, either by the very nature or the context of the canons, its meaning is to be taken otherwise. There are also communities whose vows are by their rule solemn, but which have for certain countries been commuted into simple vows by order of the Holy See.

8. *Superiores majores* are the *Abbas Primas*, Abbots who are superiors of monastic Congregations, Abbots of monasteries that are independent though belonging to some monastic Congregation, the supreme superior of any religious organization, the Provincial superiors and their Vicars, and all others who have the same jurisdiction as Provincials (Canon 488).

The Rules and particular Constitutions of individual religious organizations which are *not contrary* to the canons of the Code remain in force. Those rules and statutes that are *opposed* to the canons are abolished (Canon 489).

For the erection of a house of an exempt Order, whether it is to be a complete community, called in law a *domus formata*, or only a residence with one or more priests and some lay brothers, called in law a *domus non formata*,

the *beneplacitum of the Holy See* is required, besides the written permission of the Ordinary of the diocese (Canon 497).

In each house of a religious clerical organization there shall be appointed several lawfully approved confessors proportioned to the number of religious. These have the faculty, if there is question of an exempt Order, to absolve the religious also from the reserved cases of the Order. If a religious, even of an exempt Order, for his peace of conscience makes his confession to a priest approved by the bishop of the diocese where the confession is made, though such priest be not appointed by the superior of the Order for the confessions of the religious, the confession is valid and licit. All legislation of Orders declaring the confession of their members to a priest not approved by the superiors of the Order are hereby revoked. The priest who is thus chosen by a religious for his confession can absolve the penitent also from sins and censures reserved in the Order (Canon 519). This canon refers especially to men of religious Orders that are exempt and over whom the priests approved by the bishop have no jurisdiction, unless granted by the Holy See. According to the old law, members of such Orders could be absolved only by a priest approved by the respective superior of the Order. On 5 August, 1913, the Holy See allowed the members of exempt as well as non-exempt religious organizations to confess, without recourse to the superior, to any confessor approved by the bishop; and such confessors had the right to absolve from sins and censures reserved in the Order to which the penitent belonged. The new Code confirms this decree.

Religious Sisters may validly and licitly confess to any priest approved by the bishop of the diocese for confes-

sions in general, if the Sisters make their confession in a church, or a public or semi-public oratory. All contrary regulations of the Constitutions of Orders and Congregations of women are revoked (Canon 522). In convents of Sisters, however, no priest can hear the confessions of Sisters unless he is specially approved for them by the bishop, excepting in the case of serious illness, when any priest may be called by the sick Sister (Canon 523). Outside the case of serious illness, if the Sisters wish to call another than their regular confessor, they must choose one who is approved for that purpose by the bishop; and the bishop is urged in Canon 521 to appoint a number of priests who may be readily called when a special confessor is desired by a Sister. Priests chosen as confessors for religious should be distinguished for virtue and prudence, and be at least forty years of age. They have no authority over the penitent outside the confessional and are ordinarily not to serve as confessors of the same community for more than a term of three *continuous* years. The same priest may not act as ordinary and extraordinary confessor for the same community simultaneously. Confessors are cautioned not to interfere with the management of a religious community either as regards the rule or the external government according to approved constitutions. Whilst the ordinary term for the appointment of a regular confessor to a religious community is three years, the lack of proper confessors may oblige the Ordinary to appoint the same priest for a second and even a third term of three years, and in such cases the law yields to necessity. Outside this necessity a confessor may be reappointed, provided the *greater number* of members in a religious community, by secret ballot to which also those who have otherwise no vote in community affairs, are to be admitted,

express their wish to retain the same confessor. In such case a different confessor must be provided for the rest of the community, if they so desire.

Religious superiors may not contract debts at any one time beyond the amount of $6000, without the *beneplacitum* of the Holy See. For smaller sums the consent is required of the General Chapter, or of the General with his consultors, etc., according to the various rules of the individual religious organizations. For convents of Sisters subject to the bishop (diocesan religious communities) the written consent of the local bishop is needed (Canon 534).

As regards the novitiate, the new Code ordains that candidates must: first, be fully fifteen years of age; secondly, that they remain as postulants for six months in religious organizations of women with perpetual vows, or as lay brothers in Orders and Congregations of men; thirdly, that they pass at least one complete and continuous year as novices; and, fourthly, that they live in the house of novitiate for that year (Canon 555).

Admission of the following to the novitiate would be invalid: (1) those who belonged to a non-Catholic denomination; (2) those who are not of the required age; (3) those who are compelled to enter by grave fear, or by deceit, or by force, or those whom the superior is thus obliged to receive; (4) married people, so long as the marriage lasts; (5) those who are professed members of another religious body or who have been professed members; (6) those who are subject to penalty for grave crime of which they are accused or may be accused; (7) bishops, whether residential or titular, though they be as yet only designated by the Pope; (8) clerics who by the law of the Holy See may be held by oath, for example in

the regions subject to the Propaganda, to serve the diocese or mission, for such time as the oath lasts (Canon 542).

The novitiate, if *interrupted, in any of the following cases, must be made over again*: (1) if a novice after dismissal by the competent superior has actually left the house; (2) if a novice goes out of the house without permission with the intention of not returning; (3) if a novice remains outside over thirty days, either continuously or interruptedly, and even though he has the superior's permission, no matter what the reason may be. If a novice stays outside the novitiate over fifteen days, even though not continuous, and not over thirty, with the permission of the superior, or is kept out by force, it is sufficient for the validity of the novitiate to supply as many days as he remained outside. If a novice is not more than fifteen days away from the novitiate, the superiors may require that the days be supplied. This, however, is not required for validity (Canon 556). This Canon on the novitiate is very important, as the validity of the profession depends on its observance. It goes without saying that this law binds all religious, both men and women, religious with simple vows as well as those with solemn vows. Canonists will notice the great difference between the former legislation and the present law on the novitiate. Heretofore there was no general law making it necessary for a novice to spend the entire year in the house of novitiate; in fact, so long as the novice remained under the obedience of the superiors, he might have been living elsewhere almost the entire year. Unless the constitutions of an Order or Congregation made such a novitiate invalid, there was nothing in the common law against its validity. On 3 May, 1914, the S. Congregation of Religious issued a decree on the

requirements of the year of novitiate similar to the above (Canon 556). There is one difference, however, between that decree and the new Canon. The former required that any and all days spent outside the novitiate had to be repeated under pain of invalidity. The Code, amending this decree, is more lenient: it does not make it necessary for validity to repeat the days, if all the days one was absent during the year do not make more than fifteen. A day means a period of twenty-four consecutive hours. The novice may be frequently outside the novitiate for part of the day, but these parts of days are not to be added up to make days. They need not be counted at all. Though a religious organization may have more than one year's novitiate (and there are several that have two years according to their constitutions), one year suffices for valid profession, unless the constitutions explicitly require two years.

The new Code does not state that a novice breaks his novitiate by going outside the enclosure without permission. Canon 556 says, if the novice leaves (*deseruerit*) with the intention of not returning.

Canon 556 states that, if a novice is transferred by his superiors from one house of novitiate to another of the same order, the novitiate is not broken, and it does not seem to matter how many days may be necessary for the transfer.

The novice must be fully sixteen years of age before being allowed to take temporary vows. For perpetual as well as for solemn vows the age of twenty-one years is required under pain of invalidity (Canons 572 and 573).

When the time for which the vows were taken has expired, there should be no delay in the renewal of the vows. Superiors have the right for a just reason to allow the *anticipation* of the renewal of the *temporary vows*; but not over one month (Canon 577).

In Orders of men as well as women and in Congregations which have perpetual vows, a novice is to take simple vows for three years or longer if he should not have reached the age of twenty-one years required for perpetual as well as solemn vows. This period can be extended by the lawful superior by letting the religious take temporary vows again, but not for more than another term of three years (Canon 574). The vote of the consultors or of the community or chapter for the first vows of a novice is *decisive*. Hence a novice cannot be admitted if the majority votes against him; for the subsequent perpetual or solemn vows the vote is merely *consultive*, and the superior is not bound to act upon the vote of the majority (Canon 575).

Before first profession a novice must make arrangements to cede the administration of whatever he possesses to whomsoever he wishes for the time that he will be in simple vows, and he is also at liberty to concede the use and the income of his goods to whom he prefers, unless the constitution of the organization demand otherwise. If this disposition was not made because he had no property at the time and he should, while in vows, acquire the same, for instance, by the last will of some relation or through any other title, he may notwithstanding his vows arrange concerning the administration and the use of the income as he desires. The novice in a Congregation may before the temporary vows make his last will and dispose therein freely of the goods he actually has as well as those he may acquire in future (Canon 569). These dispositions concerning his belongings the professed member cannot change arbitrarily, unless the constitution allow such change, but it can be done with the permission of the Superior General in Orders and Congregations of men, or with the permission of the

bishop for religious women, provided that the change is not made in favor of the Order or Congregation for a notable part of the property. Whatever the religious in any Order or Congregation acquire either by their work or by donations given them as religious, must be turned over to the Order (Canon 580). In religious communities with solemn vows the Order becomes the lawful successor to any and all temporal rights of the professed from the moment of the solemn profession, and if the Order is not capable of succeeding to the rights, as for instance the Friars Minor, the Holy See becomes the legatee. Of the goods he actually has before making solemn profession he can and must dispose as he thinks best within two months before solemn profession (Canons 581 and 582).

Concerning the studies to be made in religious communities that have priests as members, the Code requires that the course of Philosophy should last at least two years, that of Theology four (Canon 589). For five years at least the junior priests must pass a yearly examination (Canon 590).

In the houses of Orders with solemn vows, both of men and women, the Papal enclosure must be observed, even though the house be not a formal and complete community but only a residence (Canon 597). In any religious house of men or women belonging to an Order that has the obligation of the choir, the Divine Office must be said in common if there are at least four choir members who are not legitimately impeded by their work. If the constitutions demand it, even less than four would be bound to say the Office in choir (Canon 610).

The *communication of privileges* between religious Orders is abolished. Each Order enjoys only those privileges that are either contained in the new Code or directly granted to the Order (Canon 613).

Regulars, including their novices, are exempt from the jurisdiction of the bishop except in cases where the law states otherwise (Canon 615). Religious organizations with simple vows do not enjoy the privilege of exemption unless it has been specially granted to them (Canon 618). In all cases in which the religious are subject to the bishop they can be disciplined by him also with ecclesiastical censures (Canon 619).

Rectors of parishes in charge of a religious community are removable and can be changed at the pleasure of the bishop, who must notify the religious superior, and they can be changed also by the superior, who must inform the bishop of the change. Both bishop and the superior act with equal right, and neither needs the consent of the other (Canon 454). In his duties as pastor the religious is subject to the bishop as well as to the religious superior. Whatever is given to the religious as pastor of the parish he acquires for the parish; otherwise he is like other religious. Notwithstanding his vow of poverty, he is allowed to accept, collect, and administer offerings for the good of the parishioners, for the Catholic schools and pious institutions of the parish. He is also permitted, according to his judgment and pursuant to the intention of those making the offerings, to expend such funds in the administration of the parish. The religious superior, however, has a right to ask for an account of his doings, as has also the bishop. Money collected for the building, maintenance, repairs, and decoration of the parochial church are in the keeping of the religious superior (Canon 630).

An *apostate* from a religious organization either of simple vows or of solemn vows is one who, being a perpetually professed member, leaves the house unlawfully with the intention of not returning, or one who, leaving

the house with permission, stays away, with the intention of giving up his obligations as a religious. This wrong intention is presumed by law if the religious does not return within a month or does not notify the superior of his intention to return (Canon 644).

The Code contains also rules for the dismissal of simply and solemnly professed members of Orders and Congregations. These regulations in most points agree with the former laws on this matter.[1]

Third Orders and other Lay Societies.

The faithful are urged to join associations erected or at least recommended by the Church. They are warned against secret, condemned, seditious, suspected societies, and, in general, all associations which endeavor to withdraw from the supervision of the Church (Canon 684).

All associations, not excluding those founded by the Holy See, unless these latter have special privileges, are under the jurisdiction and care of the bishop of the diocese. He has the right and the duty to inspect them according to the rules of the sacred canons. Those associations, however, which are by Apostolic privilege erected by the exempt religious in their own churches, are not subject to the control of the bishop in so far as their internal discipline and spiritual direction are concerned (Canon 690).

One may be a member of several societies. No one can, however, hold membership in two different Third Orders at one time. Nevertheless membership in one Third Order may be given up, so that another may be joined. Religious may hold membership in any society except a Third Order, unless the superior deems that the laws of

[1] The Holy See has issued the canons regarding Religious in separate form, translated into the vernacular, for the benefit of those who do not read Latin.

the society are not compatible with the observance of the rules and constitutions of the community to which the religious belongs (Canon 693).

The entering of the names of members on the rolls is required for valid reception in any society that constitutes a legal body. Those who desire to join must appear in person at the reception. Only in such societies and pious unions as are not active organized bodies is enrollment of absent candidates allowed (Canons 693 and 694).

Bishops, and for exempt societies regular prelates, have the right to deprive individuals of their membership, even though the statutes of the society make no provision to that effect (Canon 696). For serious reasons the bishop may suppress any society, even those erected by the religious in virtue of an Apostolic indult. Societies erected by the Holy See itself can be suppressed only by the supreme authority.

No religious Order is allowed to establish a Third Order for seculars without special permission from the Holy See. Orders that have Papal approval for the Third Order cannot establish in any church a congregation of the Third Order without the consent of the bishop, though they may receive individuals into the Third Order. Regulars likewise need the special permission of the bishop, if they wish the Tertiaries to appear at sacred functions vested with the religious habit (Canon 703).

Anyone who has taken either perpetual or temporary vows in any religious community cannot at the same time belong to a Third Order, even though he was a Tertiary before becoming a religious. If he is freed from his vows and returns to the world, membership in the Third Order revives (Canon 704).

Confraternities and church societies cannot be established in any church without a formal decree of erection by the bishop or the regular prelate, if by Apostolic indult the faculty of erection of the society or confraternity is given to the religious. The bishop's assent in writing is nevertheless required for the validity of the erection of such societies by religious (Canons 686 and 708).

Confraternities may be established in any church, public oratory, and in the so-called semi-public chapels of hospitals, colleges, seminaries, etc. In churches and chapels for the exclusive use of religious Sisters the bishop can allow the erection of associations of women only, and of pious unions whose meetings consist only of devotional exercises (Canon 712).

V.

ECCLESIASTICAL CENSURES IN THE NEW CODE.

THE censures of the Bull *Apostolicae Sedis* and all other penalties contained in past papal documents have been revoked and only those mentioned in the new Code will be in force hereafter.

I. General Principles concerning Censures.

Ecclesiastical censures are penalties by which a subject of the Church is deprived of some spiritual benefit or of benefits connected with matters spiritual, because of obstinate violation of some law of the Church, until such time as he obtains absolution from the censure. Censures, and most of all excommunication, incurred by the commission of a crime, are to be inflicted rarely and with great prudence (Canon 2241).

Only those external criminal actions that are grave sins, complete and committed with obstinacy, are to be punished by censures. A censure may be visited also on delinquents whose identity is unknown. When there is question of censures *ferendae sententiae*, a person is considered contumacious who does not desist from the crime or refuses to do penance and repair the injury done or scandal given by the crime, after having received the canonical admonitions as described in Canon 2233, 2. A censure *latae sententiae* is incurred by the very transgression of the law or precept to which the censure is attached, unless the guilty person is excused from the penalty by a reason admitted in law.

A person is considered to have ceased to be contumacious when he has sincerely repented of his crime

and has made condign satisfaction for the injury and scandal caused or has at least seriously promised to do so. Judgment as to the sincerity of the repentance, or the sufficiency of the satisfaction, or the sincerity of the promise, rests with the one from whom absolution is asked (Canon 2242).

Some censures are reserved and others are not. A censure inflicted *ab homine*, that is, by a precept of the superior or by a sentence in an ecclesiastical court, is reserved to the one imposing the censure or giving the sentence, or to his superior, his successor in office, or his delegate. Among the censures reserved *a jure*, that is by law, some are reserved to the Ordinary, some to the Holy See. Those reserved to the Holy See are subdivided into three classes, *simpliciter, speciali* and *specialissimo modo* reserved. A censure which is incurred by the very fact of committing a crime (*latae sententiae*) is not reserved, unless the law or the precept explicitly states that it is so reserved. In case of doubt concerning the law itself (*dubium juris*) as well as in a doubt about the fact (*dubium facti*) the reservation does not hold (Canon 2245).

The reservation of a censure that prevents the reception of the Sacraments—for instance, excommunication—implies the reservation of the sin. If a person, however, is excused from the censure or has been absolved from it outside confession by a superior having jurisdiction in the external forum, the reservation of the sin ceases altogether (Canon 2246).

If the censure is reserved to the Holy See, the Ordinary cannot add, for the same crime, another censure reserved to himself. If the confessor, in ignorance of the reservation, has absolved a penitent from the censure and the sin, the absolution from the censure is valid except in

censures reserved to the Holy See *specialissimo modo* and in censures imposed by a precept of the superior or by a sentence in the ecclesiastical court (Canon 2247).

In a censure that does not forbid the reception of the Sacraments—for example, suspension—the person, if otherwise well disposed, can be absolved from the sin while the censure remains (Canon 2250).

In danger of death any priest can absolve from all censures; but in two of these, namely those reserved *specialissimo modo*, and those imposed by precept or by sentence in the ecclesiastical court, the person after recovery is bound to have recourse for the imposition of a penance to the S. Penitentiary, or to the bishop or someone else having faculties to absolve from censures reserved *specialissimo modo*, and in case of censures by precept or sentence, to the authority that imposed the precept or gave the sentence. If the convalescent neglects this obligation, he falls again under the same censure (Canon 2252).

In cases where the censure into which one has fallen cannot be suffered without great danger of scandal or loss of good reputation, or involves other hardship to the penitent, any confessor can in sacramental confession absolve from any censure, no matter in what manner it is reserved; but he must impose the obligation on the penitent to have recourse within one month to the authorities for the *mandata*, i. e. a penance that will be imposed on him. As long as recourse is possible without great inconvenience, the recourse is required under penalty of falling again into the censure. If in some extraordinary case this recourse to the authorities be, morally speaking, impossible, the confessor may absolve without the obligation of recourse and impose the penance and satisfaction for the censure and specify the time in which

the special penance has to be performed. A penitent neglecting through his own fault to do the penance in the prescribed time falls again into the censure (Canon 2254).

II. Special Principles for each of the Censures.

1. excommunication.

Excommunication is a censure by which a person is excluded from communion with the faithful (Canon 2257).

The excommunicated person may be either an *excommunicatus vitandus* or a *toleratus*. No one is to be considered a *vitandus*, unless he has been excommunicated by name by the Holy See, has been publicly denounced as such and explicitly declared as a *vitandus* in the decree or canonical sentence (Canon 2258).

An excommunicated person is deprived of the right to assist at divine services, but he may be present at sermons. If an *excommunicatus toleratus* passively assists at divine services, he need not be expelled, but a *vitandus* must be removed; and if this cannot be done, divine services must be stopped, if that can be done without great inconvenience. From active participation in divine services even the *excommunicatus toleratus* whose excommunication is publicly known or who has been excommunicated in the ecclesiastical court, must be excluded (Canon 2295).

Excommunicated persons are forbidden to receive the Sacraments. After a declaratory or condemnatory sentence they may not be buried from the church, if they should die before obtaining absolution (Canon 2260).

An excommunicated priest is forbidden to celebrate Holy Mass or to administer the sacraments and sacramentals. The faithful, however, may for any good reason ask the sacraments and sacramentals of an excommunicated priest, especially when there is no one else to

minister to the applicant, and in cases where the excommunicated priest is requested he is allowed to administer the sacraments and is not obliged to inquire why he is requested to do so. The faithful, however, are not allowed to ask the sacraments from a priest who is an *excommunicatus vitandus* or a priest excommunicated by a sentence in the ecclesiastical court, except in case of danger of death (Canon 2261).

Every excommunicated person is deprived of the indulgences and of his share in the public prayers of the Church. The faithful, however, may privately pray for the excommunicated and a priest may privately apply Holy Mass for their intentions, provided that no scandal is given (Canon 2262). As Protestants fall under the class of the *excommunicati tolerati*, the Code allows Holy Mass to be applied for their intentions; but privately only.

The exercise of jurisdiction both in the internal and the external forum on the part of an excommunicated person is unlawful; and if the excommunication was imposed by sentence in the ecclesiastical court all acts requiring jurisdiction become invalid, except in danger of death, when any priest can validly absolve a person in such extremity (Canon 2264).

2. INTERDICT.

An interdict does not deprive one of communion with the faithful but of certain spiritual rights, varying with the different degrees of the interdict. An interdict is either personal or local, general or particular (Canon 2268).

A general interdict on the diocese or country, whether personal or local, can be inflicted by the Holy See alone. A general interdict on the territory of a parish or its people and a particular interdict on a specified church

or person can be inflicted also by the bishop. A personal interdict follows the person wherever he goes; the local interdict applies only in the interdicted place, but in that place to all persons, even non-residents. Those otherwise exempted, unless by a special privilege, fall under the interdict (Canon 2269).

A local interdict, both general and particular, does not forbid the administration of the sacraments and sacramentals to the dying, but it does forbid any other divine services and sacred rites, except on Christmas Day, Easter Sunday, Whitsunday, Corpus Christi, the Assumption, on which days the local interdict is suspended and it is forbidden only to hold ordinations and to solemnize marriage (Canon 2270).

In a general local interdict the following concessions are granted, unless the decree imposing the interdict states otherwise: The clergy, with the exception of those personally interdicted, are permitted to celebrate Mass and perform other sacred functions, but they must keep the doors of the church locked and not ring the church bells. In the cathedral, in parochial and also in non-parochial churches, if there is but one church in a town, there are allowed one Mass, the keeping of the Blessed Sacrament, the administration of Baptism, Holy Eucharist, Penance, Marriage without the nuptial blessing, funerals without solemnity, the blessing of baptismal water and of the holy oils, preaching. At these functions solemn chant is forbidden, there is to be no display of vestments, and the ringing of bells and playing of the organ are not allowed (Canon 2271).

In case of an interdict on a special place the following rules must be observed: If the cemetery is interdicted the faithful may be interred there, but without ecclesiastical rites. If a church or chapel is interdicted, distinction

must be made between churches where the cathedral or collegiate chapter reside, parochial and other churches. The clergy, except those personally interdicted of the chapter, may hold services behind closed doors, unless the interdict specifies that the chapter should hold its services in another church for the time of the interdict. In parochial churches there may be the usual administration of the sacraments and one Mass each day, but without singing, playing of the organ and ringing of bells. The bishop may appoint another church to serve as a parish church (Canon 2272).

In a local interdict and in an interdict on a college or community, those who have given no cause for the interdict and are not under any other censure may, if they are otherwise well disposed, receive the sacraments according to the preceding canons, without absolution from the interdict or any satisfaction (Canon 2276).

If a person is under an interdict *ab ingressu ecclesiae*, he is thereby forbidden to perform the divine offices in church or to assist at them; and if he dies without absolution from the interdict he is deprived of ecclesiastical burial. If, however, he does assist he need not be expelled from the church; and if buried in consecrated ground the body need not be removed (Canon 2277).

3. SUSPENSION

Suspension is a censure by which a cleric is deprived of either an office or a benefice or both. Suspension without specification includes privation of both office and benefice. Suspension from office or benefice inflicts privations as outlined in the following Canon (Canon 2278).

Suspension from *office* without any further limitation forbids all acts of either jurisdiction or sacred orders, as also all powers of administration except the administra-

tion of the temporal goods of one's own benefice. Suspension from *jurisdiction* forbids all acts of jurisdiction both of the internal and the external forum, ordinary jurisdiction as well as delegated. Suspension *a divinis* forbids all acts of the powers received by ordination or power of orders received by privilege. Suspension from *orders* forbids the exercise of the powers received by ordination. Suspension from *sacred orders* forbids the exercise of major orders. Suspension from *one specified order* forbids the exercise of the specified order, and the person suspended is moreover forbidden to confer that order on others, to receive a higher order and to exercise that higher order even if he shall have received it after the suspension. Suspension *from conferring a specified order* forbids only the conferring of that order, not however of higher or inferior orders. Suspension *from a specified act of the ministry* (for instance, hearing confessions), or *a specified office* (for example, the care of souls), forbids every act of that ministry or office. Suspension *from the pontifical order* forbids every act of the order of the episcopate. Suspension from *pontificalia* forbids the exercise of all functions of a bishop in which the liturgical laws require the use of crozier and mitre (Canon 2279).

If a cleric incur a suspension that forbids acts of jurisdiction both in the internal or external forum, the inhibited acts are invalid only after a condemnatory or declaratory sentence of the ecclesiastical judge or in those suspensions where the superior explicitly states that he revokes by the suspension the powers of jurisdiction (Canon 2284).

III. Excommunication reserved to the Holy See "Specialissimo Modo."

1. Such an excommunication is visited upon one who casts away the consecrated Host or carries the same off for an evil purpose, or keeps it for that end (Canon 2320).

2. On him who lays violent hands on the Roman Pontiff, whereby a person becomes *ipso facto excommunicatus vitandus* (Canon 2343).

3. On a priest who absolves or makes believe to absolve his accomplice in a sin against the Sixth Commandment. Even in danger of death the priest cannot without incurring excommunication absolve his accomplice, so long as another priest can be had without great danger of exposing the priest and giving scandal, except in case the sick person refuses to confess to another priest. The excommunication is incurred also when the penitent does not mention the sin of complicity, if the guilty confessor directly or indirectly induced the penitent not to confess the sin (Canon 2367).

4. On a confessor who presumes to violate directly the seal of confession (Canon 2369).

IV. Excommunication reserved to the Holy See "Speciali Modo."

1. All apostates from the Christian faith and all heretics and schismatics (Canon 2314).

2. Publishers of books by apostates, heretics, and schismatics which advance the cause of apostacy, heresy, or schism; also those who defend such books and others condemned by name through Apostolic Letters; finally those who knowing of the censure read or keep such books without due permission (Canon 2318).

3. Those who are not ordained priests and pretend to celebrate Holy Mass or hear confessions (Canon 2322).

4. All persons of whatever station or dignity, even that of the Cardinalate, who appeal from the laws, decrees or commands of the reigning Roman Pontiff to a general council of the Church (Canon 2332).

5. Those who have recourse to the civil authorities in order to impede the letters or documents of the Holy See or of its Legates, and prevent their promulgation or execution either directly or indirectly, as also those who on account of these letters or documents injure or intimidate the authors of the same or others on account of them (Canon 2333).

6. Those who publish laws, orders, and decrees against the liberty and the rights of the Church, as also those who either directly or indirectly impede the exercise of ecclesiastical jurisdiction both of the internal and external forum by having for this purpose recourse to any lay authority (Canon 2334).

7. Those who dare without due permission of the Church to cite before the civil court a cardinal, papal legate, or major official of the Roman Curia on matters arising from their office, or one's own Ordinary (Canon 2341).

8. Those who lay violent hands on a cardinal or a legate of the pope, or on patriarchs, archbishops, and bishops, even though simply titular (Canon 2343).

9. Those who usurp or retain, by themselves or through others, goods and rights belonging to the Church at Rome (Canon 2345).

10. Those who circulate bogus letters under the name of the Holy See or falsify papal letters, decrees, rescripts, or knowingly use such letters (Canon 2360).

11. Those who falsely denounce to a superior, either by themselves or through others, a confessor of the crime of solicitation (Canon 2363).

V. Excommunication reserved to the Holy See "Simpliciter."

1. Profiteers from indulgences (Canon 2327).

2. Those who join the sect of the Masons or other societies of the same nature that scheme against the Church or lawful civil authority (Canon 2335).

3. Those who presume to absolve without the faculties from an excommunication reserved either *specialissimo* or *speciali modo* to the Holy See (Canon 2338).

4. Those who aid or abet anyone in a crime for which he was declared *excommunicatus vitandus*. Clerics who knowingly and of their own accord participate with such a one *in divinis* and who admit him to divine services (Canon 2338).

5. Those who bring into the civil court a bishop (not of their own diocese) or a titular bishop, an abbot, a prelate *nullius*, or any of the major superiors of religious communities approved by Rome (Canon 2341).

6. Persons of either sex who enter the enclosure of nuns of solemn vows, without due permission, and those who admit them to such places; likewise women who enter the enclosure of religious men of solemn vows, as also the superiors and others who admit them. Finally, religious bound to enclosure by papal decree who go outside without due permission (Canon 2342).

7. Those who retain unjustly Church property of any kind, either by themselves or through others, or who thwart those who have a right to the income from Church goods. They can apply to the Holy See for absolution only after having made full restitution (Canon 2346).

8. Those who fight a duel, or who make or accept a challenge thereto, or who give any aid in or favor it in any way, as also those who purposely go to see the duel,

who permit it or do not oppose it in as far as they can (Canon 2351).

9. Clerics in major orders and religious of solemn vows who attempt to contract a civil marriage, as also all persons attempting to contract marriage with them (Canon 2388).

10. Those who are guilty of simony in the conferring of an office, benefice, and ecclesiastical dignity (Canon 2391, 1).

11. The vicar capitular as well as any of the members of the cathedral chapter, as also others outside the episcopal curia, who steal, destroy, conceal, or substantially alter any document belonging to the episcopal curia (Canon 2405).

VI. Excommunication reserved to the Ordinary.

1. Catholics who marry before a non-Catholic minister (Canon 2319).

2. Catholics who contract marriage with the explicit or implicit consent that either all or some of their children may be brought up as non-Catholics (Canon 2319).

3. Catholics who knowingly present their children to a non-Catholic minister for baptism (Canon 2319).

4. Catholic parents or those taking the place of the parents who knowingly have their children brought up or instructed in a non-Catholic persuasion (Canon 2319).

5. Those who prepare bogus relics, or who knowingly sell, distribute or expose them for public veneration (Canon 2326).

6. Those who lay violent hands on a cleric or a religious (Canon 2343).

7. Those who procure abortion, not excepting the mother, if abortion has actually taken place (Canon 2350).

8. Religious of non-exempt communities who apostatize from the religious life. Apostates of exempt orders incur excommunication reserved to the major superiors of their order (Canon 2385).

9. Religious of simple perpetual vows, both in orders and congregations, who contract marriage without dispensation and the persons thus contracting with them (Canon 2388).

VII. Excommunication not reserved.

1. Authors and publishers who without due permission have books of the Bible printed, or annotations and commentaries on the same (Canon 2318, 2).

2. Those who dare to demand or force the Church to give ecclesiastical burial to infidels, apostates, and others excluded from ecclesiastical burial (Canon 2339).

3. Those who alienate Church property and knowingly fail to obtain the *beneplacitum* of the Holy See, if the goods exceed in value the sum of $6000. All those implicated in the transaction by giving, receiving, or consenting, fall under the censure (Canon 2347).

4. Those who force another in any way to enter the clerical life or a religious community, or to take vows, whether solemn or simple, temporary or perpetual (Canon 2352).

5. The faithful who neglect to denounce within a month the priest who is guilty of sollicitation in confession (Canon 2368, 2).

VIII. Interdicts incurred ipso facto.

1. An interdict *speciali modo* reserved to the Holy See is incurred by any university, college, chapter, and other community of whatsoever kind, that appeals from the orders and decrees of the reigning Sovereign Pontiff to a general council of the Church (Canon 2332).

2. Those who knowingly celebrate or make another celebrate divine offices in places that are interdicted, as also those who admit excommunicated, interdicted or suspended clerics after their censure has been published by a declaratory or condemnatory sentence, incur an interdict *ab ingressu ecclesiae,* reserved to the authority whose law or command was violated (Canon 2338, 3).

3. Those who are the cause of a local interdict or an interdict on a college or community incur a personal interdict (Canon 2338, 4). Although there is no mention made of the reservation of this interdict, it is understood that in case an authority inflicts an interdict on an individual or a community no one can free such person from the punishment except the one who imposed it, or his superior.

4. An interdict *ab ingressu ecclesiae* reserved to the Ordinary falls on those who of their own accord give ecclesiastical burial to persons not entitled thereto by law (Canon 2339).

IX. Suspensions incurred ipso facto.

1. suspensions reserved to the holy see.

1. A consecrating bishop and the assistants, whether bishops or priests, who consecrate a bishop without leave from the Holy See, are *ipso facto* suspended, as also the consecrated bishop, until the Holy See shall absolve them (Canon 2370).

2. Those knowingly promoted to orders as well as the one ordained and those ministering or receiving any other sacrament through simony, are *ipso facto* suspended (Canon 2371).

3. Those who receive orders from one who is excommunicated, suspended or interdicted publicly, or from a notorious apostate, heretic, schismatic, incur suspension *a divinis* (Canon 2372).

4. Suspension from conferring orders for a year is incurred by: (1) those who ordain a non-subject without proper dimissorial letters; (2) those who ordain a subject without testimonial letters, if after the age of puberty the ordinand lived in another diocese for six months, or, in case of soldiers, for three months; (3) those who ordain one to major orders without a proper canonical title; (4) those who ordain religious when they have no right to be ordained outside the diocese in which the monastery of the candidates is situated (Canon 2373).

5. A religious in major orders whose profession is null and void on account of deceit on his part is *ipso facto* suspended until the Holy See dispense him (Canon 2387).

2. SUSPENSION RESERVED TO THE BISHOP.

Clerics who sue in the civil court a priest or cleric or religious without due permission from the bishop, incur suspension from office (Canon 2341).

3. SUSPENSIONS NOT RESERVED.

1. Priests who presumptuously hear confessions without proper jurisdiction are *ipso facto* suspended *a divinis*. Those who presumptuously absolve from reserved sins are *ipso facto* suspended from the hearing of confessions (Canon 2366).

2. Those ordained without dimissorial letters or with false ones or before the canonical age or by skipping some order intentionally, are *ipso facto* suspended from the order thus received (Canon 2374).

3. Suspension *a divinis* is incurred by those clerics who resign an office, benefice, or ecclesiastical dignity into the hands of lay persons (Canon 2400).

4. An abbot or a prelate *nullius* who without necessity puts off his consecration for three months after receiving

the Papal letters, *ipso facto* incurs suspension from jurisdiction (Canon 2402).

5. A vicar capitular who gives dimissorial letters contrary to Canon 858 § 1, 3, *ipso facto* incurs suspension *a divinis* (Canon 2409).

6. Religious superiors who in violation of Canons 965-967 send their subjects for ordination to a strange bishop, are *ipso facto* suspended for one month from the celebration of Holy Mass (Canon 2410).

VI.

THE SACRAMENTS.

WHEREAS the Sacraments of the Church, instituted by Christ, are the principal means of sanctification and salvation, the greatest care is demanded in the timely and proper administration and reception of them. It is unlawful to administer them to heretics and schismatics, though they ask for the Sacraments in good faith, unless they first renounce their errors and are reconciled to the Church (Canon 731). As regards the matter and minister of the sacraments in general the Code states that:

The holy oils used in the administration of several of the Sacraments must be blessed by the bishop on the preceding Holy Thursday. In case of necessity only are holy oils blessed over a year ago to be used. When the holy oils are nearly consumed, a little unblessed olive oil may be added, but the quantity added should be smaller than the consecrated oils; this process may be repeated (Canon 734).

The pastor must obtain the holy oils from his own bishop and keep them under lock and key in a respectable receptacle in the church. The bishop may allow them to be kept in the house for good reasons (Canon 735).

For the administration of the Sacraments the minister shall not demand anything besides the usual offering sanctioned either by diocesan law or the recognized custom of the diocese (Canon 736).

Baptism.

Baptism, which is the door to and foundation of all the other Sacraments, constitutes for all mankind a necessary means of salvation either in actual reception or, where this is not possible, at least in desire. When baptism is

given with all the rites and ceremonies prescribed in the Ritual, it is called *solemn*; otherwise, it is *private* baptism (Canon 737).

1. THE MINISTER OF BAPTISM.

A priest is the ordinary minister of solemn baptism; its administration, however, belongs partly to the pastor or another priest authorized by him or the Ordinary. Permission is lawfully presumed in a case of necessity. Those who actually live in a parish but have a domicile or quasi-domicile elsewhere, should have their children baptized in their home parish if it can be easily done and without delay; otherwise, the pastor may in his territory solemnly baptize transients (Canon 738).

Outside one's own territory no one is allowed to solemnly baptize, without due permission, even his own parishioners (Canon 739).

A deacon is the extraordinary minister of solemn baptism, but he is not allowed to make use of this power without the permission either of the Ordinary or the pastor. They may give permission for a good reason; in case of necessity this permission may lawfully be presumed (Canon 741).

2. THE SUBJECT OF BAPTISM.

Every human being born into this life, who has not yet been baptized, is a subject for this Sacrament. When there is question of baptism, *parvulus* or *infans* means one who has not yet attained the use of reason; those who are from infancy mentally debilitated to such a degree that they have never had the use of reason, are considered as infants, at any age (Canon 745).

Infants of parents who have no professed religion cannot be baptized unless the Catholic education of the

child is assured and the parents or guardians or at least one of them consent. If there is neither father or mother, nor grandfather or grandmother, nor guardians, or if these are living but have lost their right over the child, or cannot in any way exercise it, the child may be baptized. In case of danger of death, when it can be foreseen that the infant will not live until the use of reason, the infant may lawfully be baptized, though the parents are unwilling (Canon 750). The same rules are to be followed in reference to the infants of parents when both are Protestants or schismatics or fallen-away Catholics (Canon 751).

Adults are not to be baptized except at their own request and after due instruction, and they are to be admonished to repent of their sins. In danger of death, when it is not possible to instruct them more fully in the principal mysteries of faith, it is sufficient in order to baptize them that they in some way show their assent to the faith as proposed to them and seriously promise that they wish to observe the rules of Christian life. If they cannot even ask for baptism, for instance, because they are unconscious, paralyzed, etc., but have either before or in their present condition shown in some probable way the intention to receive baptism, they may be baptized conditionally. If afterward they get well and there remains doubt about the validity of their baptism, they should be baptized again conditionally (Canon 752).

3. THE RITES AND CEREMONIES OF BAPTISM.

The bishop can for a good and serious reason allow the ceremonies of the baptism of infants to be used in the baptism of adults (Canon 755).

A child is to be baptized according to the Rite of the parents. If one of them belongs to the Latin Rite, the

other to an Oriental Rite, the child shall be baptized in the Rite of the father, unless the special law made by the Holy See for a particultar Rite or Oriental diocese decide otherwise. If one is a Catholic, the other a non-Catholic, the child is to be baptized in the Rite of the Catholic parent (Canon 756).

In solemn baptism the use of baptismal water is obligatory (Canon 757). Though baptism may be given validly either by immersion, infusion, or aspersion, the Church favors the infusion and the immersion ceremony, which are in use in most churches; and either the one or the other, or both mixed, should be retained according to the various approved Rituals of the Churches (Canon 758).

Private baptism may be given in danger of death. If a priest or deacon baptizes in danger of death, he should use the ceremonies the Ritual prescribes after baptism, if there be time. Outside a case of danger of death the bishop can allow private baptism only in the conditional baptism of adult converts from Protestantism. The ceremonies which have been omitted in private baptism in danger of death should, as soon as possible, be supplied in the church after the recovery of the sick person (Canon 759).

4. THE SPONSORS.

In solemn baptism the Church, according to a most ancient custom, requires a sponsor to be present; in private baptism also a sponsor should stand, if one can easily be had. If there was no sponsor for the private baptism, there should be one when the ceremonies are supplied; but he does not contract the spiritual relationship of the Sacrament (Canon 762). If baptism is repeated conditionally, the sponsor who stood at the first

baptism should again act, if he can easily be had; otherwise there is no need of a sponsor in conditional baptism. The law does not therefore call for a sponsor in the baptism of converts who are baptized conditionally (Canon 763).

There should be but one sponsor, who may be of different sex from the one to be baptized; at most two sponsors, one man and one woman, may be employed (Canon 764). The sponsor must be designated either by the one to be baptized or his parents or guardians, and in their default by the minister. Protestants, schismatics, persons excommunicated by sentence in the ecclesiastical court, or who have committed a crime to which the law attaches loss of good name or loss of right to legal action, and finally clerics who have been deposed or degraded, and the father and mother of the one to be baptized, cannot validly stand as sponsors (Canon 765).

Persons who are not fourteen years of age should not be admitted as sponsors, unless the minister has a good reason for admitting them. Those who are excommunicated for committing a notorious crime to which excommunication is attached, as also all persons of bad character, are not lawfully admitted. In case of necessity novices and professed religious may with permission of the superior be sponsors; clerics in sacred orders need the explicit permission of their Ordinary to act licitly as sponsors (Canon 766).

Spiritual relationship from baptism is contracted with the one baptized only by the minister of baptism and the sponsors (Canon 768).

5. TIME AND PLACE OF BAPTISM.

Infants should be baptized as soon as possible; pastors and preachers must frequently admonish the faithful of

this serious duty (Canon 770). Baptism may be given on any day (Canons 771, 772).

The proper place for solemn baptism is the baptistry of the church or public oratory (Canon 773). Every parish church is to have its baptismal font. The bishop may allow or also command non-parochial churches to have a baptismal font if the parish church is too far away for part of the congregation (Canon 774).

In private houses solemn baptism can be given only in the following case: 1. the children and nephews of the highest ruler of a nation and of those who have the right of succession to the throne; 2. in an extraordinary case the bishop may allow baptism to be given in a private house (Canon 776).

6. RECORDING AND PROOF OF BAPTISM.

The pastor must enter in the baptismal register the name of the one baptized, the minister, parents, sponsors, and the date and place of the ceremony. In case of illegitimate children the name of the mother is to be entered, if it is publicly known that the child is hers, or if she in writing and before witnesses should ask that her name be entered. The father's name is to be entered, if he is known as such by some public and authentic document, or if he in writing and before witnesses should ask that his name be entered. In all other cases the child should be entered in the records as of unknown origin (Canon 777). If baptism was not administered by the pastor nor in his presence, the minister must as soon as possible send the record to the priest who is the proper pastor by reason of domicile (Canon 778).

For the proof of baptism, in cases where no one's rights are prejudiced, it is sufficient to have the statement of one absolutely trustworthy witness, or the sworn statement of the one baptized in adult age (Canon 779).

Confirmation.

The Sacrament of Confirmation is to be given by the imposition of hands and the anointing of the forehead with holy chrism and the saying of the words prescribed in the *Pontificale* approved by the Church (Canon 780). The chrism must be blessed by the bishop, though the Sacrament is administered by a priest authorized either by law or by papal indult (Canon 781).

1. THE MINISTER OF CONFIRMATION.

A bishop is the ordinary minister of confirmation. A priest acts as extraordinary minister when this power is given to him either by law or by special indult of the Holy See. By law this power is given to cardinals, abbots, and prelates *nullius*, vicars and prefects apostolic, who, with the exception of cardinals, cannot validly use this power outside the limits of their territory and only for the time of their office. Priests of the Latin Rite who have the faculty to confirm can validly use it only for the Catholics of their own Rite, unless the contrary is expressly stated in the indult. Priests of Oriental Rites who have the faculty or indult to give Confirmation together with Baptism to the infants of their Rites, are forbidden to confirm infants of the Latin Rite (Canon 782).

In his own diocese the bishop may lawfully confirm also those not of his diocese, unless their Ordinary should have expressly forbidden them to go outside the diocese for Confirmation. Outside his own diocese the bishop needs the permission of the local Ordinary, though he may lawfully presume permission under certain circumstances. If he confirms his own subjects privately without the use of the crozier and mitre, he does not need the permission of the local Ordinary (Canon 783).

2. THE SUBJECT OF CONFIRMATION.

Baptism must precede Confirmation. In order that one may be lawfully confirmed and receive the grace of the Sacrament it is necessary to be in the state of grace and properly instructed, if he has the use of reason (Canon 786). Although this Sacrament is not absolutely necessary for salvation, no one may without sin neglect it when occasion offers to receive it. The pastors shall see to it that the faithful receive it at the proper time (Canon 787).

It is the custom of the Church of the Latin Rite not to give Confirmation before about the seventh year of age. It can, however, be given sooner if the child is in danger of death or the minister should think it advisable for good and serious reasons (Canon 788).

3. TIME AND PLACE OF CONFIRMATION.

This Sacrament may be conferred at any time. Whitsuntide is an especially appropriate season (Canon 790).

Although the church is the proper place for the administration of Confirmation, the bishop may for a good reason give it in any becoming place (Canon 791). Within his own diocese the bishop may confirm in any church, not excluding those exempt (Canon 792).

4. SPONSORS.

According to the most ancient custom of the Church a sponsor should be employed in Confirmation (Canon 793).

The sponsor should present only one or at most two candidates, unless the bishop judges otherwise for good reasons. There should not be more than one sponsor for each person to be confirmed (Canon 794).

To act validly as sponsor it is required; (1) that the sponsor be himself confirmed, have the use of reason, and the intention to accept the office; (2) that he be not

a member of a heretical or schismatical sect, excommunicated by sentence in the ecclesiastical court, or for other crimes deprived by law to act as sponsor; (3) the father or mother for their own children, a husband or wife for their partner, are likewise excluded; (4) the sponsor must be designated by the one to be confirmed or his parents, guardians, or, if they refuse to appoint one, the minister of Confirmation or the pastor may designate the sponsor; (5) the sponsor must physically touch the one to be confirmed at the moment of Confirmation (Canon 795).

For lawful sponsorship in Confirmation the same conditions are required as for the sponsors in Baptism. The Church, moreover, desires that the sponsor at Baptism should not act as sponsor in Confirmation for the same person, unless the bishop allow it for a good reason (Canon 796).

From Confirmation arises a spiritual relationship between the one confirmed and the sponsor, by virtue of which the sponsor is obliged to take at all times an interest in the spiritual welfare and Christian education of the one confirmed (Canon 797).

5. RECORDING AND PROOF OF CONFIRMATION.

The pastor should enter in the Confirmation records the names of the minister, the person confirmed, the parents and sponsor, date and place of Confirmation. It must also be entered in the baptismal register. Hence, if the persons confirmed were not baptized in the parish where they are confirmed, a copy of the record of Confirmation should be sent to the church where they were baptized (Canon 798).

If the proper pastor of the one confirmed was not present at the Confirmation, the minister of the Sacrament

shall either himself or through others notify him as soon as possible (Canon 799).

For proof of Confirmation, in case nobody's rights are prejudiced, it is sufficient to have one thoroughly trustworthy witness, or the sworn statement of the one confirmed, unless Confirmation was received in infancy (Canon 800).

Sacrament of Penance.

In the Sacrament of Penance the faithful who are properly disposed receive pardon of the sins which they have committed after baptism, by the judicial absolution of a legitimately appointed priest (Canon 870). With this definition of the Sacrament of Penance the Code opens the treatise on the Sacrament of mercy. Four sections cover the whole matter, namely (1) the minister of the Sacrament of Penance, (2) the reservation of sins, (3) the subject of the Sacrament of Penance, (4) the place where confessions are to be heard. Subjoined to the tract on Penance are found the Canons on Indulgences.

1. THE MINISTER OF THE SACRAMENT OF PENANCE.

The authorized minister of the Sacrament of Penance must be a validly ordained priest (Canon 871).

Besides the character of the priesthood, the minister of the Sacrament of Penance needs the power of jurisdiction, which may be either *ordinary*, that is, such as goes with the appointment to an office or dignity, or *delegated*, namely that which is given to a priest apart from such office (Canon 872).

The Supreme Pontiff has by divine right ordinary jurisdiction over all the faithful of whatsoever diocese or rite. The Cardinals of the Church have the same

power in reference to the Sacrament of Penance by privilege of Canon Law. Local Ordinaries, pastors and those regarded in law as pastors have ordinary jurisdiction for their respective territory. Ordinary jurisdiction is given by law to Canons Penitentiary of cathedral and collegiate chapters, also to religious superiors of exempt religious over their subjects, and in the latter case the power is more particularly defined by the Constitutions of each Order. Ordinary jurisdiction ceases with the loss of office, or by excommunication, suspension from office and interdict imposed by either a condemnatory or declaratory sentence of the ecclesiastical court (Canon 873).

Delegated jurisdiction for the granting of pardon of sins by sacramental absolution is given by the local Ordinary, within the territory over which he has charge. In the same manner, exempt religious receive their jurisdiction for the hearing of confessions of seculars from the local Ordinary. Before the publication of the Code, exempt religious received their jurisdiction for seculars as well as for members of their Order from their superiors, while for the exercise of jurisdicition over seculars they needed in addition the approval of the Ordinary of the place. Priests of religious Orders are not supposed to exercise the jurisdiction they receive from the Ordinary without at least the presumed permission of their superiors. If, nevertheless, they make use of it, the absolution is valid, in virtue of Canon 519. The local Ordinary gives jurisdiction to priests of religious communities when they are presented to him for this purpose by their superiors. The Ordinary may not without a serious reason refuse to grant faculties to religious priests for whom the superior requests jurisdiction; the bishop has, however, the right to examine those

presented (Canon 874). This Canon implies a deviation from the general principle that he who has ordinary jurisdiction can delegate it to another. The pastors receive by law ordinary jurisdiction in their parishes, as heretofore; nevertheless they cannot delegate another priest for confessions in their parishes, since Canon 874 explicitly states that delegated jurisdiction for confessions is conferred by the local Ordinary, thus indirectly excluding all others.

In clerical exempt religious organizations the religious superior who has this power in virtue of the Constitutions of his Order can delegate it for confessions of regulars to secular priests and to religious of his own Order and of other Orders. The jurisdiction extends over the professed religious, the novices and all those who board in the religious house either as servants, or for the purpose of study and education, or as guests. In the former law it was commonly held that the religious superior could not give faculties for his subjects to priests unless they were approved for confession by their own Ordinary. This restriction is removed by the new Code. In an exempt religious Order of laymen the superior proposes the confessor for the community to the bishop of the place where the religious house is situated; but the Ordinary alone can give jurisdiction (Canon 875).

In order to hear validly the confessions of religious Sisters, either in simple or solemn vows, and their novices, secular priests as well as religious priests need special jurisdiction from the Ordinary of the place where the community is established. All contrary particular laws and privileges are revoked (Canon 876). This Canon should be compared with and explained by Canon 239, which grants to Cardinals jurisdiction to hear the confessions of Sisters in any diocese, and by Canon 522,

which allows Sisters to go to any confessor, approved for women, in any church, or public or semi-public oratory. The meaning of this Canon, therefore, is that a priest needs special jurisdiction when hearing the confessions of Sisters in their own house. Canon 523 goes even further and grants a Sister who is seriously ill, though not in danger of death, permission to call any approved priest of the diocese to hear her confession as often as she wishes during such illness.

For further regulations regarding the confessors of religious see chapter "Religious Orders and Congregations," page 71.

To hear confessions *validly* jurisdiction must have been granted explicitly either in writing or orally. No fee can be charged for the grant of jurisdiction for confessions (Canon 879). The Code demands that the giving of jurisdiction is made certain either in writing or by words in any form which sufficiently indicates the fact. If, therefore, it is doubtful whether the Ordinary or any other person who can delegate has actually granted jurisdiction or not, the priest has no jurisdiction; for no presumed, implied, or any other kind of jurisdiction is admitted. The delegation must be explicit.

The local Ordinary or the religious superior is not to revoke or suspend jurisdiction or permission to hear confessions without a serious reason. For grave cause the Ordinary may deprive of his faculties a pastor or penitentiary, but such persons have the right of appeal to the Holy See under the condition that, pending the appeal, they obey the Ordinary. Without previously consulting the Holy See, a bishop may not deprive of their faculties at one and the same time all the confessors of an established religious community, that is, a house where there

are at least six professed religious, four of whom must be priests (Canon 880).

Secular priests as well as religious approved for confessions in any place or diocese by either ordinary or delegated jurisdiction may validly and licitly absolve *vagi* and *transients* from another diocese or parish and the faithful of an Oriental Rite. Those who have ordinary jurisdiction (bishops, vicars and prefects apostolic, pastors, religious superiors for their subjects) may absolve all those over whom they have jurisdiction, even outside their territory (Canon 881).

In *danger of death* every priest, not excluding those who have not received jurisdiction to hear confessions, or those who have lost it by censures inflicted through sentence of the ecclesiastical superior, can validly and licitly absolve any person in any place from sins and censures, even though a priest with either ordinary or delegated jurisdiction is present. In case of censures reserved to the Holy See *specialissimo modo* and those inflicted *ab homine* (that is to say, by the bishop or other Ordinary by precept or by sentence in the ecclesiastical court), the penitent after recovery from danger of death is obliged to have recourse to the authorities, under pain of relapsing into the censures in question (Canon 882).

A priest on a sea voyage who is approved for confessions either by his own Ordinary or the Ordinary of the port where he embarks or any of the ports at which the vessel calls, may hear aboard ship the confessions of any of his fellow voyagers, though the boat passes through or calls at places under the jurisdiction of various local Ordinaries.

Whenever the boat stops during the trip he may hear the confessions of those who for any reason come aboard as well as of those who, if he goes ashore for a short time,

request to be heard, and he may absolve them also from the reserved cases of the Ordinary of the place (Canon 883).

Absolution given by the priest to his accomplice in a sin of impurity is *invalid* except when the accomplice is in danger of death, but even then the priest acts illicitly and incurs the excommunication reserved to the Holy See *specialissimo modo*, if another confessor even though he be not approved, could be called without grave risk of scandal. The Constitution *Sacramentum Poenitentiae* of Pope Benedict XIV on this matter is still in force (Canon 884).

If a confessor has not a good reason to doubt the proper disposition of his penitent and the latter asks for absolution, the priest is not free to deny or to defer it (Canon 886). Priests are to remember that in the tribunal of penance they take the part of both judge and physician, and that they are at the same time God's ministers of justice and mercy. Accordingly they must see to it that both the honor of God and respect for His laws are maintained, and that they do what is best for the soul of the penitent according to the circumstances. Confessors are not to inquire about the name of an accomplice nor to ask unnecessary questions, especially in reference to sins against the Sixth Commandment committed by the young, lest perchance these penitents learn what it is better they should not know at their age (Canon 888).

Absolute silence concerning the sins he has heard in confession is a most serious obligation for every confessor, and direct revelation of sins heard in confession is punished by excommunication reserved to the Holy See *specialissimo modo*, besides such penalties as may be inflicted by the Ordinary. Priests have likewise a most

serious obligation not to indirectly reveal the sins of any penitent by words, signs, or in any other way whatsoever. If the services of an interpreter are used in confession at the penitent's request, the interpreter and all other persons who obtain knowledge of sins confessed in any manner are bound by the sacramental seal (Canon 889).

Confessors are absolutely forbidden to make use of the knowledge obtained from confession in any manner which may cause annoyance to penitents, even though every danger of revelation is excluded. All actual superiors as well as those who may be made superiors later on must take care not to use the knowledge gained in confession in any way for the external government of their subjects (Canon 890). The master of novices and the sub-master as well as the superior of a seminary or college shall not hear the confessions of the alumni boarding in the house, unless the alumnus himself in particular cases, and for a grave and urgent reason and of his own free will requests them to do so (Canon 891).

Pastors and others who in virtue of their office have the care of souls are under a grave obligation of justice to hear either in person or through a substitute the confessions of the faithful committed to them, as often as their subjects reasonably ask to be heard. When there is urgent need, all confessors are bound by the virtue of charity to hear confessions, and in danger of death every priest is so bound (Canon 892).

2. RESERVATION OF SINS.

Persons who have ordinary power to give jurisdiction to others for the hearing of confessions or to inflict censures can also (with the exception of the vicar capitular or the vicar general, who needs a special mandate of the bishop) reserve certain cases to their own tribunal, or

limit the power of absolution of the priests of their diocese or territory. This recall of cases to their own tribunal is known as "reservation of cases". A case may be reserved either with or without a censure. If a case is reserved with a censure, and if that censure forbids the reception of the Sacraments (as do excommunication and personal interdict), the reservation of the censure carries with it the reservation of the sin. If, however, the censure is not incurred, by reason of ignorance or other excuse admitted in law, the sin is not reserved. In the bishop's reserved cases, however, he may specify that the case is reserved also when the censure is not incurred, and in that case the sin is reserved, provided it was committed with full knowledge and consent, so as to make it a grave sin. Bishops are advised in Canon 897 to reserve but few cases, and such only as seem absolutely necessary in the interests of public morality. If a censure is reserved to the Holy See, the bishop cannot add to the same sin a censure reserved to himself, and he should not reserve any sin to which the Holy See has attached a censure, though such censure is not reserved. If a confessor, in ignorance of the reservation, absolves his penitent from censure and sin, the absolution from the censure is valid, provided it was not a censure imposed by personal precept of the Ordinary or a censure reserved to the Holy See *specialissimo modo* (Canons 293, 897, 2246, 2247).

The only sin reserved to the Holy See independently of the censure is the false denunciation before the ecclesiastical judge of a priest for the crime of solicitation in confession. There is, in Canon 2363, an excommunication reserved to the Holy see *specialissimo modo* incurred by this crime, but even in cases where the excommunication is not incurred, on account of ignorance of

the censure, the sin is nevertheless reserved to the Holy See (Canon 894).

From the cases reserved by the Ordinary to his tribunal the canon penitentiary of the cathedral and of the collegiate chapter has the right to absolve, and the Code desires that bishops should grant this faculty habitually to the deans with the power to subdelegate in districts at a distance from the episcopal residence. The Code also grants to pastors and those who are held in law equal to pastors the right to absolve from the bishop's reserved cases during the entire period in which the Easter duty can be made, and to every missionary during the time of missions for the people (Canon 899).

All reservation of diocesan cases ceases—(1) for persons who make their confession in a house where they are held through illness, and for those who confess before marriage; (2) in each individual case where the lawful superior is asked for the faculty to absolve and the request is refused, or in cases where in the confessor's judgment it is not possible to ask the faculty to absolve without either great inconvenience to the penitent or the danger of violating the seal of confession; (3) finally, if the penitent confesses outside the diocese where the case is reserved (provided the case is not reserved also in the diocese where the confession is heard), even though he left his own diocese for the purpose of obtaining absolution (Canon 900). In ordinary cases where the confessor is confronted with a bishop's reserved case from which he has not obtained faculty to absolve, he may advise the penitent either to go to a priest who has the faculty or otherwise write for him to the Ordinary to get the faculty in the case. If the penitent cannot without some embarrassment wait for the absolution until the priest obtains the faculty, the confessor may absolve

him indirectly from the reserved case and require him to come back after some time, and in the meanwhile apply to the Ordinary for the faculty. If this should not be practical (for instance, if the priest does not expect to come back to the place), he could not oblige the penitent to go to another priest to make the confession over again; for, as number 2 quoted above states, in case of great inconvenience the reservation ceases. For absolution from papal reserved cases see preceding chapter on Censures.

3. THE SUBJECT OF THE SACRAMENT OF PENANCE.

Persons who have committed mortal sin after baptism are subject to the power of the keys for direct absolution, and they are obliged to confess each and every mortal sin with the circumstances which change the species of the sin (Canon 901). Mortal sins committed after baptism and not yet confessed and directly remitted constitute the so-called *materia necessaria* of the Sacrament of Penance. By *materia sufficiens et libera* is meant any mortal sin already directly remitted by absolution and venial sins (Canon 902). If a person cannot make himself understood by the priest, he may confess through an interpreter; but, as this Canon clearly indicates, there is no obligation on the part of the penitent to use this extraordinary means. The interpreter is bound by the seal of confession (Canon 889).

If a penitent has been solicited to sins of impurity by the confessor, as explained in the Constitution *Sacramentum Poenitentiae* of Pope Benedict XIV (which remains in force and is commented upon in all the manuals of moral theology), the penitent is obliged under pain of excommunication to denounce the guilty priest within one month to the bishop of the diocese where the penitent

lives or to the Congregation of the Holy Office (Canon 904).

The faithful are at liberty to make their confession to any lawfully approved priest, even though he be of another Rite (Canon 905).

All the faithful are strictly bound to confess their sins at least once a year, from the time at which they reach the age of discretion—i. e. when they have acquired sufficient knowledge of right and wrong and of the nature and obligation of the Sacrament of Penance (Canon 906). The duty to instruct children in their religious obligations rests primarily with the parents and the pastor. At the age of seven the law presumes that a child has come to the use of reason. The law of annual confession cannot be satisfied by a sacrilegious or purposely invalid confession (Canon 907).

4. WHERE CONFESSIONS SHOULD BE HEARD.

The proper place for hearing confessions is a church, or public or semi-public oratory (Canon 908). Confessionals for hearing women must be located in an open and conspicuous place in a church or in a public or semi-public oratory. Penitent and priest must be separated by an irremovable screen with small perforations, so that the penitent may be heard, but may not be seen by the confessor (Canon 909). The meaning of the Code is that the screen or grate should hide the penitent, so that he may be less embarrassed and so as to remove any possible abuse of the confessional.

The confessions of women, unless they are ill and unable to go to the church, must not be heard outside the confessional, except in case of sickness or other real necessity; and in these cases the precautions prescribed by the bishop must be observed. Confessions of men may be heard in private houses (Canon 910).

5. INDULGENCES.

An indulgence is the remission of temporal punishment due to sins the guilt of which has already been pardoned. For the living members of the Church the granting of indulgences means a real, direct remission of the consequences of sin, the merited penalties; for the deceased the indulgences are applied by way of supplication, for they have passed beyond the jurisdiction of the Church (Canon 911).

To the Vicar of Christ on earth, the Sovereign Pontiff, is committed by Christ the disbursing of the spiritual treasury; lesser authorities of the Church have limited power to grant indulgences (Canon 912).

On All Souls' Day every Mass enjoys the privilege of a plenary indulgence for the souls for whom it is applied. During the Forty Hours' Devotion also all the altars of the church are similarly privileged (Canon 917).

New indulgences granted to any church which have not been published by the Holy See, shall not be announced to the people without first consulting the Ordinary. Books containing summaries of indulgences, booklets and leaflets in which concessions of indulgences are mentioned, are to be submitted likewise to the local Ordinary before publication (Canon 919).

A day on which an indulgence may be gained by visiting a certain church, is counted from noon of the preceding day to midnight of the day itself (Canon 923).

Indulgences attached to beads and other religious articles cease only when these objects have altogether lost their identity or if they are sold (Canon 924).

The person who wishes to gain an indulgence must be baptized, free from excommunication, in the state of grace at least at the completion of the prescribed good works,

and a subject of the one granting the indulgence. He must have at least a general intention to acquire the indulgence and fulfill the requisite conditions (Canon 925).

The fruit of a plenary indulgence may be plenary or partial, according to the dispositions of the soul that proposes to gain it (Canon 926). A plenary indulgence may be gained only once a day, unless the contrary is explicitly conceded. Partial indulgences may be gained over and over on the same day by repeating the prescribed good works, unless the contrary is explicitly stated (Canon 928).

Members of a religious community or residents in institutions of education or of hospitals, if these have the approval of the Ordinary, gain the indulgences for which a visit of a church or public oratory is prescribed by visiting the church or public oratory attached to these institutions; otherwise they may gain the indulgences by visiting the chapel in which Mass is usually said for the community (Canon 929).

Indulgences cannot be gained for another living person. The indulgences granted by the Holy See are all applicable to the souls in purgatory, unless the contrary is stated (Canon 930).

Confession, when required as a condition for gaining an indulgence, can be made within *eight days* immediately preceding the day of indulgence. Holy Communion may be made on the preceding day. Both confession and Communion can be made within the octave of a feast (counting the feast day as the first day) to which an Indulgence is attached. Indulgences granted for devotional exercises of three days, a week, month, etc. may be gained if confession and Communion is made within the next eight days immediately following the close of the exercises.

The faithful who are in the habit of going to confession, whenever possible, at least twice a month, or who receive holy Communion daily, or five times a week, in the state of grace and with proper intention, may gain all pertinent indulgences without actual confession; though otherwise confession is required as a necessary condition. Ordinary and extraordinary jubilees, or indulgences granted after the manner of jubilees do not come under this rule (Canon 931).

The good works which one is bound to do by law or precept (for instance, the hearing of Mass on Sundays and holidays of obligation) do not serve for gaining an indulgence, unless in the concession the contrary is stated. The pious works or prayers imposed as penance in confession gain the indulgences attached to them (Canon 932).

To one and the same object (crucifixes, beads, medals, etc.) various indulgences may be attached, if the priest who blesses them has the different faculties for the purpose; but one and the same prayer or other good work to which several indulgences are attached under different titles does not serve for gaining the several indulgences unless the prayer or good work is repeated. One confession and Communion ordinarily will suffice for the gaining of different indulgences under different titles (Canon 933).

If for the gaining of an indulgence prayer in general for the intention of the Holy Father is prescribed, *purely mental prayer is not sufficient*; but the particular vocal prayers prescribed are left to the choice of the faithful, unless otherwise stated in the grant of the indulgence. The prayers prescribed for gaining the indulgences may be recited in any language, provided the translation is authorized either by the Sacred Penitentiary or by one

of the Ordinaries of a place where that language is in common use. Indulgences cease altogether by any addition, shortening, or interpolation of the exercise to which they are attached. To gain the indulgences it suffices to say the prayers alternately with a companion, or to follow them mentally while they are recited by another (Canon 934).

Confessors may commute a particular pious work prescribed for gaining an indulgence in favor of those who by reason of a recognized impediment cannot perform the prescribed work (Canon 935).

Mutes can gain the indulgences attached to public prayers, if they assist with the faithful in the place of worship and raise their hearts and minds to God while the prayers are said. Private prayers required as a condition for gaining indulgences may be said by mutes mentally, or in sign language, or simply by reading without oral pronunciation (Canon 936).

The Holy Eucharist.

THE laws of the Code in reference to the Blessed Sacrament are summed up under Title III of the Third Book; Chapter I treats of the Holy Eucharist as a Sacrifice; Chapter II, as a Sacrament.

I. The Holy Sacrifice of the Mass.

1. the celebrant.

The Code affirms the recognized principle of Catholic theology that only priests have the power to offer the Holy Sacrifice of the Mass (Canon 802). A secular priest who wishes to say Mass outside his own church must have the "Celebret" of his bishop; a religious priest requires that of his superior; a priest of an Oriental Rite, that of the S. Congregation of the Oriental Church. If it is known that a priest has committed an offence that deprives him of the right to say Mass, he is not to be permitted to celebrate. If a priest is well known to the rector of the church where he requests permission to say Mass, he may be admitted without the "Celebret". If the applicant is not known to the rector and has no "Celebret", but appears in clerical attire and receives no compensation of any kind for his services, he may be admitted once or twice to say Mass; he must, however, sign his name and set down the name of his diocese and the office he holds, in a record which is to be kept for that purpose. The bishop may issue further regulations besides those of the Code for admittance to the celebration of Mass by extern priests; and these rules must be obeyed by all the diocesan rectors of churches both secular and religious; in the admission of priests

of exempt religious Orders in churches of their own Order only, religious are not bound by the diocesan regulations (Canon 804).

Every priest is obliged to say Mass several times a year (Canon 805). It used to be the more common opinion of theologians that a priest, in virtue of his priesthood, was obliged to say Mass several times a year, but as there was no explicit law on the subject some theologians maintained that a strict obligation could not be urged.

The rules concerning bination on Sundays and holidays of obligation remain the same as formerly. The bishop may not allow a priest for any reason to say more than two Masses on one day (Canon 806). The principle in reference to freedom from mortal sin and the necessity of previous confession of such sins before saying Mass, and the observance of the natural fast, remain the same as before (Canons 807 and 808).

2. RITES AND CEREMONIES OF HOLY MASS.

The laws in reference to altar breads and wine remain unchanged. The priest must follow his own Rite in the ceremonies and the kind of altar bread wherever he celebrates (Canons 814-816).

Even in cases of extreme necessity no priest is allowed to say Mass with one species only or to consecrate outside the Mass (Canon 817).

3. TIME AND PLACE OF THE HOLY SACRIFICE.

No change is made in reference to the days on which Mass may or may not be said (Canon 820). The Latin Rite has but one day, Good Friday, when Mass may not be said in any church or place. The Oriental Rites have more so-called *aliturgical* days.

Mass is to be said within the time that elapses between one hour before the aurora and one hour after midday. The concession made in 1907 in favor of convents of Sisters and other religious and charitable institutions to have one or three Masses at midnight on Christmas Day and to give Holy Communion to those who wish to receive at that time, is confirmed by the Code (Canon 821). This privilege is not conceded to parochial and conventual churches, where Mass on Christmas is regulated by the laws of the Missal.

The Code repeats the law contained in the rubrics of the Missal that Mass is to be said only in a church or chapel which has been blessed for divine worship. In semi-public oratories (that is, chapels in seminaries, hospitals, religious or charitable houses) the bishop may by his own authority allow the celebration of Mass. In strictly *private* chapels, that is to say, those in private residences, the Holy See only can allow Holy Mass to be said habitually. The bishop may permit Mass in a private house for a good and reasonable cause *per modum actus,* that is, once or twice, but not regularly and continually (Canon 822).

4. MASS STIPENDS.

Whenever a priest says two Masses on the same day and has to apply one Mass under a title of justice, he cannot accept more than one stipend (Canon 824). Unless, therefore, the bishops of the United States obtain an indult from the Holy See, the pastors of our churches, with the exception of vicariates apostolic subject to the S. Congregation of the Propaganda, will not be allowed to accept a stipend for their Masses on Sundays and holidays of obligation, as one Mass must be applied for the parishioners, under an obligation of justice. On

Christmas Day, however, a stipend may be received also for the second and the third Mass.

It is unlawful (1) to say Mass for an intention which at some future time may be offered and then retain the next stipend of one who asks for a Mass, under the plea that the Mass was offered up for that intention; (2) to accept a stipend for a Mass which was due and applied from another title, as, for instance, the Mass of the pastor on Sundays; (3) to take two stipends for the application of one Mass, unless it is certain that one stipend was offered for the celebration of Mass without the application, as, for instance, if a priest's services are requested by a church; in which case the compensation is given for the services and not for the application of the Mass intention (Canon 825).

Any kind of bargaining or trading with Mass stipends is severely forbidden (Canon 827). For each stipend that a priest accepts, no matter how small, he must apply a Mass (Canon 828). If the stipends which had passed into the possession of a priest are lost, even through no fault of his own, the obligation does not cease (Canon 829). If a person offers a certain sum of money for Masses without specifying how many, the number must be determined according to the ordinary stipend of the place where the person lives, unless circumstances are such that it should be rightly presumed that his intention was different (Canon 830). There is no prohibition in this Canon nor in any other law of the Code to say high Mass in this case, provided the usual stipend for high Mass only is charged.

The bishop has the right to regulate for his diocese the amount of the Mass stipend. If there is no law by which the stipend is fixed, the custom of the diocese must be followed. All religious, both exempt and non-exempt,

must observe the laws of the bishop or the custom of the diocese in reference to stipends (Canon 831).

As regards the time within which Mass is to be said for a stipend the following rules obtain: (1) if the day is specified by the donor, Mass must be said on that day;. (2) if Mass is requested for an urgent cause, for instance, in serious illness, for a successful examination, etc., Mass must be said as soon as possible; otherwise its fulfilment may become impossible and the priest would have to return the stipend; (3) in all other cases Mass is to be said within a short time, if one or a few stipends are offered; when many stipends are offered by the same person, the time may be prolonged in proportion to the number of Masses. Former decrees on this subject determined one month as the proper time for one to ten stipends; (4) if the donor of the stipend explicitly leaves the time for saying the Masses to the judgment of the priest, he may say them according to his convenience (Canon 834). He must, however, refrain from accepting more intentions than he can fulfil within one year (Canon 835).

If a priest has stipends for Masses which he is not obliged to say personally, he may give them to any priest whom he either personally or through the recommendation of his bishop knows to be quite trustworthy (Canon 838); but he is held to the obligation of the stipends until he has received notice of the reception of the stipend and the acceptance of the obligation (Canon 839). The Code greatly simplifies the matter of assisting priests with Mass stipends. If a priest is personally known to the one who wishes to transfer to him a stipend, nothing further is required; if he is not known, the priest who desires to obtain Mass stipends from a fellow priest should procure letters of recommendation from his own bishop.

If a priest or layman either as administrator of pious institutions or for any other reason has the duty to have a certain number of Masses said annually, he must turn them over to the bishop at the end of the year (the year to be reckoned from the time the Masses were due) unless the donor has explicitly allowed a longer period of time (Canon 841).

Priests must keep a record of the stipends which they receive and enter the amount of the stipend, the intention, and whether or not they have said the Masses. The bishop in churches of seculars, the provincial or other major superior in churches of religious, has the right and duty at least once a year to inquire whether obligations arising from stipends have been complied with (Canons 842-844).

II. The Blessed Eucharist as a Sacrament.

1. the minister of holy communion.

A priest is the only ordinary minister of Holy Communion. The deacon is the extraordinary minister. The latter needs the permission of the bishop or of the pastor, which permission may be given for a grave reason; in a case of necessity it may be lawfully presumed (Canon 846).

Every priest may privately give Holy Communion to the sick. Pastors have the exclusive right to carry the Blessed Sacrament publicly to the sick in countries where this is the custom, and the administration of the Holy Viaticum, whether public or private, is likewise reserved to them (Canons 848-850).

Priests must give Holy Communion according to their own Rite. Only in a case of urgent necessity may a priest of an Oriental Rite which uses fermented bread for the Holy Eucharist, give Communion with the

particles consecrated according to the Latin Rite, and vice versa (Canon 851). Holy Communion is to be given under the species of bread only (Canon 852).

2. THE RECIPIENT OF HOLY COMMUNION.

Children who on account of their age have not yet attained to the knowledge of and desire for this Sacrament, should not be admitted to Holy Communion. In case of danger of death, Holy Communion may be given to little children, if they know how to distinguish the Holy Eucharist from ordinary bread and reverently adore It. Aside from the case of danger of death, a better knowledge of Christian doctrine and a more accurate preparation are justly demanded, to the extent at least that the children know the mysteries of faith that are necessary as absolute means of salvation, and that they approach Holy Communion with such devotion as can be expected of children. It is the duty of the pastor to see to it that the children who have attained the age of discretion and are sufficiently instructed, are as soon as possible strengthened by this Divine Food (Canon 854).

Persons in mortal sin may not approach the table of the Lord without first cleansing their soul by sacramental confession; perfect contrition is not sufficient, except in a case where the reception of Holy Communion is made necessary and there is no opportunity to go to confession previously (Canon 856).

Persons who have been sick for a month without sure hope of speedy recovery, may, on the advice of their confessor, receive Holy Communion once or twice a week, though they have taken medicine or some liquid food (Canon 858). The reader will note that this Canon goes further in its concession in favor of the sick than the original decree of 1906, which permitted Holy Com-

munion only once or twice a month, except to those who were in a hospital, religious house, etc. where the Blessed Sacrament was kept; to these latter Holy Communion could be given once or twice a week, even though they had not observed the eucharistic fast.

Every Catholic who has reached the age of discretion is obliged to receive Holy Communion at least once a year, at Eastertide, unless his confessor should judge it necessary for the penitent to abstain from Holy Communion for a longer time. One's Easter duty is to be made between Palm Sunday and Low Sunday, but the bishops may extend the time for all the faithful of the diocese from the fourth Sunday in Lent to Trinity Sunday. The people are to be advised to fulfil the Easter precept in their own parish church, or otherwise to take care to inform their pastor that they have elsewhere complied with their duty (Canon 859).

The faithful should be admonished according to the decrees of the Holy See to receive Holy Communion frequently and also daily (Canon 863). When in danger of death from whatsoever cause, the faithful are obliged to receive Holy Communion. If they should have received in the morning and suddenly fall into danger of death the same day, they are to be advised to receive again in the form of Holy Viaticum. Theologians formerly were divided on this question. Some held that a person in such circumstances should not receive again, whilst others maintained that they were obliged to receive, since they had not received in the form of Viaticum. The Code in this case advises reception of Holy Viaticum, but does not make it obligatory. While the danger of death lasts, Holy Communion may be administered for several days in succession in the form of Holy Viaticum (Canon 864).

Permission is granted to the faithful of all recognized Catholic Rites to receive Holy Communion for devotion sake in any Rite, either Oriental or Latin. They are to be advised to receive their Easter Communion in their own Rite; Holy Viaticum, however, must be received in one's own Rite, except in a case of urgent necessity (Canon 866).

3. TIME AND PLACE FOR ADMINISTRATION OF COMMUNION.

Holy Communion may be administered every day with the exception of Good Friday, on which day Holy Eucharist may be given only in the form of Viaticum. On Holy Saturday Holy Communion cannot be given except in the Mass of the day or immediately after the Mass. As a rule, Holy Communion is to be given during those hours when Mass may be said, but for a good reason it may be administered earlier in the morning or later in the afternoon (Canon 867).

The celebrant of Mass is not allowed to give Holy Communion during the Mass to people who are so far away from the altar that he has to go out of sight of the altar (Canon 868).

Holy Communion may be administered wherever Mass is allowed to be said, even in private oratories, unless the bishop of the diocese forbid it in a particular case for good reasons.

THE Canons on the Sacrament of Extreme Unction fall under three heads: (1) the minister, (2) the subject, (3) the rites and ceremonies of Extreme Unction.

1. The Minister.

The Sacrament of Extreme Unction is validly administered only by a priest. The pastor of the place in which the sick person lives is the ordinary minister of Extreme Unction. In case of necessity, or with at least the reasonably presumed permission of the pastor or of the Ordinary, any other priest may lawfully administer this Sacrament. In clerical religious communities the superior has the right to give Extreme Unction to the religious, the novices, and all who habitually dwell in the religious house. Solemnly professed nuns receive the last rites from their confessor; other religious communities are to receive them either from the pastor within whose parish the religious house is situated or from the chaplain, provided he has received from the bishop parochial rights over the institution (Canon 938).

The ordinary minister is bound in justice to give Extreme Unction to his subjects or delegate another priest to do so; in case of necessity every priest is under the obligation of charity to confer Extreme Unction (Canon 939).

2. The Subject.

Extreme Unction can be administered only to the faithful who after the attainment of the use of reason come into danger of death either through illness or old age. In the same illness this Sacrament is not to be repeated,

unless the sick person recovers after receiving Extreme Unction and relapses into danger of death (Canon 940).

If there is doubt (1) whether or not the sick person has reached the years of discretion, (2) or whether he is really in danger of death or not, (3) or whether he is still alive, Extreme Unction should be given conditionally (Canon 941). It should not be given to those who obstinately persevere in mortal sin publicly known; if their disposition is doubtful, they may be anointed conditionally (Canon 942).

Patients who, while in full possession of their mental faculties have asked for Extreme Unction, at least implicitly, or who presumably would have asked for it, had they foreseen their dangerous condition, should be given Extreme Unction absolutely, though they have lapsed into unconsciousness by the time the priest arrives (943).

Although Extreme Unction is not an absolutely necessary means of salvation, no one should neglect to receive it. Care should be taken that the sick person should receive the Sacrament while he is still conscious (Canon 944).

3. Rites and Ceremonies.

Olive oil, blessed for the Sacrament of Extreme Unction by a bishop or a priest who has faculties from the Holy See, is the necessary matter of Extreme Unction (Canon 945). The oil of the sick should be kept by the pastor in a respectable place in a receptacle of silver or white metal. It should be kept in the church and not in a private house, unless the bishop allows this on account of necessity or for other reasonable cause (Canon 946).

The anointing should be done exactly in the order and manner prescribed in the ritual. In case of necessity, one anointing on one of the organs of sense, or more prop-

erly on the head, with the shorter formula, is sufficient; but the obligation then remains to supply the various anointings, if the patient does not die immediately. The anointing of the loins is always to be omitted. The anointing of the feet may be omitted for any good reason. Outside the case of grave necessity the anointings must be done by hand and not with an instrument (Canon 947).

Holy Orders.

THE treatise on the Sacrament of Orders in the new Code is divided into six chapters: (1) the minister, (2) the subject, (3) requisites prior to ordination, (4) rites and ceremonies, (5) time and place of ordination, (6) recording and proof or the ordinations.

1. The Minister.

A bishop can ordain only his own subjects. If non-subjects are to be ordained, the ordaining bishop requires dimissorial letters from the Ordinary of the candidates to be ordained. An important change in the legislation on this point is contained in Canon 956, which admits only one title under which a bishop may ordain, namely, domicile together with birth in the diocese. If the ordinand was born in another diocese, but has a domicile in the diocese where he wishes to be ordained, he must take the oath that he intends to stay permanently in the diocese. All other titles under which a bishop could formerly consider a candidate as his subject have been abolished. Before the reception of the first tonsure the question as to what diocese a candidate belongs must be settled. If the candidate has no domicile in the diocese for which he wishes to be ordained, he must obtain letters of excardination from his own Ordinary, and the bishop who wishes to ordain him for his diocese must issue letters of incardination.

Vicars and Prefects Apostolic, abbots and prelates *nullius*, if they have received episcopal consecration, are held equal to bishops in the matter of ordinations. If they have not received episcopal consecration, they are nevertheless entitled to confer tonsure and minor orders

within the territory of their jurisdiction on their own subjects as well as on those who come to them with dimissorial letters of their Ordinaries. Outside the territory of their jurisdiction they cannot validly confer tonsure and minor orders (Canon 957). Abbots in charge of a monastery without a territory *nullius* may confer upon their professed subjects tonsure and minor orders, provided they are priests and have received the abbatial blessing from the bishop. They cannot validly ordain other candidates (Canon 964).

A bishop of the Latin rite may not lawfully ordain a candidate of an Oriental rite, though he be his subject, without permission of the Holy See (Canon 955).

Exempt religious cannot be lawfully ordained except with the dimissorial letters of their own major superior. Superiors are not permitted to have their subjects promoted to major orders before they have taken perpetual or solemn vows. Those who are in the three years of temporary vows, prescribed for all orders by Canon 574, can be promoted only to tonsure and minor orders. The ordination of all other alumni of any religious community is regulated by the law for seculars, and all privileges are revoked by which the superiors could issue dimissorial letters for major orders to their subjects who are in temporary vows (Canon 964). After taking perpetual simple profession and solemn vows professed religious no longer belong to the diocese which they had as seculars, but become incardinated in the religious Order or Congregation (Canon 585). The meaning of these Canons seems to be that all religious Orders and Congregations with either solemn or perpetual simple vows have jurisdiction over the ordination of their subjects, so that they are entitled to issue dimissorial letters for major orders to religious in solemn or perpetual

simple vows and for tonsure and minor orders to those in temporary vows. Religious who profess solemn vows are ordained to major orders under the title of *poverty*; the perpetually simple professed, under the title of *mensa communis* or *Congregationis*, or a similar title provided by the Constitution of the respective religious Congregation. Religious organizations which do not take perpetual vows follow the rule for seculars as regards the title of ordination (Canon 982). Many of these religious communities have special provisions made for them by the Holy See.

Religious must send their subjects for ordination to the bishop in whose diocese exists the house in which the candidate is a member (Canon 965). The superior can send his subjects to another bishop only (1) if the bishop gives permission, (2) if he is of a different rite from the religious, (3) if he is absent, (4) if he has no ordinations on the next regular ordination days, (5) if the diocese is vacant and the administrator has not received episcopal consecration. A statement of these exceptions is to be drawn up by the episcopal curia and shown to the bishop to whom the religious are sent for ordination.

2. The Subject of Ordination.

Age. Neither seculars nor religious are to receive first tonsure before they have begun the course of theology. Subdeaconship is not to be conferred until the end of the third year of theology and the completion of the candidate's twenty-first year of age; deaconship must not be conferred before the beginning of the fourth year of theology and the completion of the candidate's twenty-second year of age; priesthood is not to be conferred before the beginning of the second semester of the fourth year of theology and the completion of the ordinand's

twenty-fourth year of age. On account of the extraordinary circumstances caused by the protracted world-wide war, the Holy See has dispensed for a time with the full requirements of this Canon.

Interval between Orders. The period of time between the first tonsure and first minor order, and also between the four minor orders, may be set by the Ordinary. Between the last minor order and subdeaconship one year should intervene; between subdeaconship and deaconship three months, and between deaconship and priesthood three months, unless the interests of religion demand a shorter interval, in the Ordinary's judgment.[1]

Without special permission from the Roman Pontiff, however, it is not lawful to confer on any candidate minor orders with subdeaconship, or two major orders on the same day, all customs to the contrary being reproved It is also forbidden to give tonsure and one or the other minor orders, or the four minor orders, on the same day (Canon 978).

Title of Ordination. The ordinary titles are *benefice, patrimony, pension* (Canon 979). If none of these is available, the title may be supplied by that of *servitium dioecesis*; or in places subject to the Propaganda, by the title of mission (*titulus missionis*). In both of these cases, however, the ordinand has to take the oath that he will permanently serve the diocese or mission under the authority of the local Ordinary (Canon 981).

Irregularities and Impediments. There are considerable changes in the legislation concerning irregularities. The following persons are irregular, *ex defectu*:

1. Illegitimates, whether the illegitimacy is public or occult, unless they have been legitimized or have taken some vows.

[1] See above, page 32.

2. Those who are physically defective to such an extent that they cannot perform the sacred ministry of the altar either without danger or without becoming respect. If the maiming follows after ordination, a greater defect is required to debar a cleric from the ministry of the orders he has received.

3. Those who are epileptics, insane, diabolically possessed. Cases of this kind, it would appear, are to be referred to the Holy See, if the candidates had been so afflicted and later have been freed. In the case of those already ordained, the Ordinary has the right to decide whether they are free from their affliction, and allow them again to perform the sacred functions.

4. Those who have married twice or oftener.

5. Those who have been branded by the law.

6. Judges who have pronounced death sentence.

7. Those who have held the office of public executioner and their voluntary and immediate assistants in the execution of capital punishment (Canon 984).

The following are irregular by crime (*ex delicto*):

1. Apostates, heretics, schismatics.

2. Those who outside the case of extreme necessity allowed themselves to be baptized in any manner by non-Catholics.

3. Those who have attempted marriage or merely gone through the civil contract of matrimony while they are lawfully married, or in sacred orders, or under religious vows, though only temporary ones, as also men who, while bound by religious vows or by a valid marriage bond, attempt marriage.

4. Those who have committed voluntary homicide or have effectually procured abortion and all who coöperated in these crimes.

5. Those who have mutilated themselves or others, or have attempted suicide.

6. Clerics who practise medicine or surgery forbidden to them, if in their practice they have caused the death of any person.

7. Those who perform an act reserved to clerics in major orders while they either did not have that order or were prohibited from the exercise of it by a canonical penalty, either personal or local, corrective or punitive.

The foregoing crimes cause irregularity only when they are external, either public or occult, mortal sins, committed after baptism or in the act of receiving baptism from non-Catholics as stated in no. 2 (Canons 985 and 986).

The following classes are under impediments to ordination:

1. Sons of non-Catholic parents, as long as the parents remain outside the Church.

2. Married men.

3. Men who hold an office or administration forbidden to clerics, until such time as they are free from the office and responsibilities.

4. Slaves, properly so-called, before they have obtained their liberty.

5. Men held to ordinary military service by the law of the state until they have completed their service.

6. Men baptized in adult age, until they have been sufficiently tried, according to the judgment of the Ordinary.

7. Men suffering from infamy of fact, as long as the stigma lasts, according to the judgment of the Ordinary (Canon 987).

Ignorance does not excuse either from any of the irregularities or from the impediments (Canon 988). The

irregularities and impediments are multiplied by the various causes inducing irregularity or impediment, but they are not multiplied by the repetition of the same cause, except in the case of voluntary homicide (Canon 989).

Faculty is granted to the Ordinary to dispense his subjects from all irregularities arising from occult crime, with the exception of homicide or abortion and cases which have been brought to court. All confessors have the same faculty in occult urgent cases in which the Ordinary cannot be approached and there is imminent danger of great harm or loss of one's good name, but only for the licit exercise of the orders which the penitent has already received. The Ordinary or his delegate can grant dispensation also for orders to be received, while the confessor can only take away the irregularity in more urgent cases that a cleric may lawfully exercise the orders which he has received previously (Canon 990).

What is to be done before Ordination. Seculars and those religious who in matters of ordination have to follow the rule for seculars are required to show the following credentials: (1) proof of last ordination; or, if there is question of first tonsure, the certificates of Baptism and Confirmation, (2) certificate of completion of the respective course of studies, according to Canon 976, (3) character testimonial from the rector of the seminary, or from the priest to whom the young man was entrusted who received permission to board outside the seminary, (4) testimonial letter of the local Ordinary in whose diocese the candidate has lived for such a length of time that he could contract a canonical impediment, which length of time is explained by Canon 994 to be three months for men in military service, and for others six months from the completion of the fourteenth year of

age, (5) testimonial letter of the major religious superior, if the candidate is a religious.

If the Ordinary can ascertain nothing definite about the candidate for the time he lived in his diocese, or if he has been living in so many different dioceses that it is impossible or too difficult to obtain all the required testimonials, the Ordinary who ordains him shall demand a so-called supplementary oath (Canon 994).

All candidates both secular and religious must pass an examination on the courses of studies required for the respective orders. The right to examine belongs to the bishop who ordains his own subjects or religious living in his diocese and to the bishop who authorizes another by dimissorial letters to ordain his subjects (Canons 996 and 997).

The names of the candidates for any of the major orders, with the exception of religious in solemn or perpetual simple vows, are to be published in their respective parishes. The bishop may dispense for a just cause from this publication or he may demand that the names be published in other churches also, or he may in place of the announcement order the names to be posted at the church doors for several days among which there must be at least one Sunday or holiday of obligation. The publication is to be made on a day of obligation during the Mass or on another day, or at another hour when there is a large gathering of people in church (Canon 998).

Candidates for first tonsure and minor orders shall make three days' retreat at least; candidates for major orders, six full days. If they are to be promoted to several major orders within half a year, the bishop may reduce the days of retreat for deaconship to not less than three full days (Canon 1001).

Rites and Ceremonies. In the conferring of any order the minister shall faithfully follow the proper rites as outlined in the *Pontificale Romanum* and other ritual books approved by the Church, which it is not lawful for any reason to omit or invert (Canon 1002).

The Mass of ordination or consecration of a bishop must always be celebrated by the minister of the ordination or consecration (Canon 1003).

If a candidate who has received orders in an Oriental rite obtains an indult from the Holy See to receive higher orders in the Latin rite, he must first receive those orders of the Latin rite which he had not received in the Oriental rite (Canon 1004).

All those who receive major orders are obliged to receive Holy Communion at the ordination Mass (Canon 1005).

Time and Place of Ordination. The episcopal consecration must be conferred in Mass on a Sunday or on a feast of the Apostles. Major orders must be given in Mass on Ember Saturdays, Saturday before Passion Sunday, and Holy Saturday. For grave reason the bishop can confer major orders on any Sunday or holiday of obligation, namely all those days that were declared holidays of obligation by Pope Urban VIII. First tonsure may be given any day and hour; minor orders in the forenoon of any Sunday or a *festum duplex.* The custom of ordaining outside the times for ordination as stated in this Canon is reproved as unlawful. The laws concerning ordination days must be observed also when a bishop of the Latin rite by Apostolic Indult ordains a cleric of an Oriental rite, or vice versa (Canon 1006).

Whenever an ordination has to be repeated or a rite supplied, either absolutely or conditionally, it may be done also outside the ordinations days and privately (Canon 1007).

Bishops cannot confer orders which require the use of the Pontificals outside their own territory without permission of the local Ordinary. A Cardinal, however, can use the Pontificals anywhere outside the City of Rome and he is obliged to notify the local Ordinary only if he wishes to pontificate in the Cathedral (Canon 1008).

Recording and Proof of Ordination. After the ordination the names of each of those ordained and of the ordaining bishop together with the place and date is to be entered in a special record, which is to be kept in the episcopal curia of the diocese where the ordination took place. In the same place should be preserved the testimonial and dimissorial letters.

To each of the men ordained is to be given a certificate of ordination. If the candidates were sent to another bishop for ordination, they are to show this certificate to their own Ordinary, so that a record of the ordination may be made in the archives of their own diocese (Canon 1010).

The local Ordinary, or, in case of religious, the major superior who issued dimissorial letters to his subjects, shall send notice to the pastor of the church where the newly ordained subdeacons were baptized, in order that the fact of the ordination to subdeaconship may be recorded in the baptism record (Canon 1011).

Matrimony.

ONE of the most important titles (Tit. VII, Bk. III) of the new Code of Canon Law is, without doubt, that which treats of Matrimony. Since many of the changes herein introduced are far-reaching in their consequences, it is essential that priests devoted to the care of souls should acquire a knowledge of the points of difference between the old legislation and the new. According to Canon 1018, pastors shall not neglect prudently to instruct their flocks concerning the Sacrament of Matrimony and the impediments thereto. Up to the present moment we are without an *official* commentary which would serve as a guide to the solution of several otherwise practically insoluble difficulties. Consequently, the purpose of these pages can be none other than an attempt to give a concise, yet, as far as possible, a complete idea of the bearing of the new law on our pastoral conditions.

Betrothment.

Espousals, to be valid, must be in writing and signed by the parties and witnesses as heretofore. A promise of marriage, either unilateral or bilateral, which does not meet these requirements, is void in both the internal and the external forum (Canon 1017). In the *external* forum: hence such espousals have no binding force before the Church's tribunals; v. g. one cannot bring an action to recover damages, or to compel the other party to marry. They are also worthless in the *internal* forum, i. e. no obligation in conscience, either of fidelity or of justice, arises therefrom. An obligation in conscience, however, might arise incidentally owing to some other

circumstance. For instance, a young woman, ignorant of the law, who allowed herself to be violated with the express understanding of subsequent marriage, would have a claim against her violator, and he would be bound to repair the harm, v. g. by furnishing her with a dowry, or, if the damage could not otherwise be mended, by marrying her. Furthermore, it is well to observe that even valid betrothment permits an action solely to recover damages, if due; but not to compel one to marry (l. c.).

Establishment of Status Liber.

That marriage might be contracted both licitly and validly, the Church has ever insisted on the *status liber* of the parties being duly established beforehand. To this end she has prescribed an investigation and the proclamation of the banns.

Investigation. *In periculo mortis*, if other proofs cannot be had, and provided there be no indications to the contrary, the sworn statement of the parties that they are not hindered by any impediment will suffice (Canon 1019). Otherwise, previous to marriage the pastor shall carefully question both the bride and the groom separately and apart in order to ascertain if there exists any impediment; if each, especially the bride, freely consents to the marriage; and whether they are sufficiently instructed in Christian doctrine. This last question may be omitted as often as it appears useless owing to the condition of those concerned (Canon 1020). It is obvious, therefore, that the pastor is obliged to provide for the instruction of those whom he finds lacking in the knowledge of Catholic truth; else he is responsible for the ignorance of the contracting parties and their offspring. It belongs to the Ordinary of the place to lay down special rules for the conduct of this investigation (l. c.). Be-

fore proceeding, it may be well to remark that, unless expressly excluded, the term *Ordinarius loci* in law comprises the following for their respective territory: 1. the Pope; 2. bishops and their vicars general; 3. administrators apostolic; 4. vicars and prefects apostolic; 5. those who in their default succeed all the foregoing for the time in accordance with law or approved custom (Canon 198). Under No. 5 are included here in the United States the administrators of vacant dioceses. To return to the investigation, if Baptism has not been conferred in his own parish, the pastor is to demand evidence of Baptism from both parties, or from the Catholic party only in the case of marriage to be contracted with a dispensation from *disparity of cult* (Canon 1021). The ordinary proof of Baptism is a certificate drawn up in due form. Another proof which may sometimes be admitted, v. g. when it is impossible to secure a certificate, is, provided nobody is prejudiced thereby, the testimony of a witness who is above all suspicion, or the oath of the person himself, if he had been baptized as an adult (Canon 779). It is evident that in the case of a mixed marriage to be contracted with a dispensation from *mixed religion*, the pastor is to require evidence of Baptism from the non-Catholic party also. Finally, those not yet confirmed are to receive the Sacrament before marriage, when it can be done without grave inconvenience (Canon 1021).

Banns. The banns are to be published by one's own pastor (Canon 1023). Consequently, if the parties belong to different parishes, the proclamation should be made in both parishes. If, after reaching the age of puberty, one or both of the parties resided elsewhere for six months, or, provided there is a suspicion that an impediment had been contracted, even for a shorter period, the pastor is

to refer the matter to the Ordinary and abide by his instructions (l. c.). The banns are to be proclaimed on three successive Sundays and other days of precept in church during Mass or other divine services at which a large congregation is present (Canon 1024). In lieu thereof the bishop may have the names posted publicly at the church door for at least eight consecutive days, two of which are to be days of precept, v. g. a Sunday and a holiday of obligation (Canon 1025). This substitution may be made by the Ordinary of the place alone, not by the pastor. In the case of mixed marriage the banns are not to be proclaimed, unless, in the absence of scandal, the Ordinary of the place deems it advisable to admit such publication. All mention of the religion of the non-Catholic party is to be omitted (Canon 1026).

Dispensation from Banns. The question of dispensing from the proclamation of banns is dealt with in Canon 1028, which, however, is far from clear. The meaning of said canon appears to be as follows. 1. When the bride and groom have the same domicile or quasi-domicile and the marriage is to be celebrated in this domicile or quasi-domicile respectively, the Ordinary of said place may dispense from the proclamation of banns not only for his own diocese, but also for an outside diocese, v. g. the diocese in which one or both parties had resided for six months after attaining the age of puberty. 2. When the parties belong to different dioceses, i. e. have a domicile or quasi-domicile in different dioceses, the power to dispense belongs to the Ordinary of the place in whose diocese the marriage is contracted. 3. Should the marriage, however, take place in a diocese in which neither has a domicile or quasi-domicile, v. g. in which they have resided for a month without the intention of establishing there either a domicile or a quasi-domicile, then

either the Ordinary of domicile or quasi-domicile of either bride or groom may grant the dispensation.

Procedure in case of Doubtful or Certain Impediments. What is to be done when a *doubt* arises as to the existence of an impediment? 1. The pastor is to investigate the matter more closely, examining under oath (a) at least two witnesses worthy of credence, provided there be not question of an impediment which would bring disgrace on the parties, and, (b) if necessary, the parties themselves. 2. Should the doubt arise previous to beginning or finishing the publication of banns, the pastor is to begin or finish the publication, as the case may be. 3. If after this he prudently judges that the doubt still remains, he is not to assist at the marriage without first consulting the Ordinary of the place. What course is to be pursued when a *certain* impediment is detected? 1. If the impediment is *occult*, viz. one which cannot be proved in the external forum (Canon 1037), the pastor is to publish the banns, and, without divulging the names of the parties, refer the case either to the Ordinary or to the Sacred Penitentiary. 2. When the impediment is *public* and is discovered before commencing the publication of banns, the pastor is not to proceed with the publication until the impediment has been removed, even though he knows that a dispensation has been obtained for the internal forum only. 3. Should the impediment be detected only after the first or second publication, the pastor is to continue and, in the meantime, lay the matter before the Ordinary (Canon 1031).

Special Precautions. Unless a reasonable cause demand the contrary, the pastor is not to assist at a marriage until at least three days have elapsed since the last publication of banns. Furthermore, if the marriage has not been contracted within six months, the proclamations are to

be repeated, unless the Ordinary should deem it unnecessary (Canon 1030). Wherefore, this latter case is to be submitted to the decision of the Ordinary. Save in the case of necessity, the pastor is not to assist at the marriage of *vagi*, i. e. those who at present are without a domicile or quasi-domicile, unless he has previously advised with the Ordinary of the place or a priest delegated by the same, and received permission to assist (Canon 1032).

Marriage Instruction.

The pastor should not neglect to instruct the parties concerning the holiness of the Sacrament, their mutual obligations, the duties of parents toward their offspring, and strongly urge them to make a good confession and Communion before marriage (Canon 1033). Finally, he is to exhort minors (those who have not completed their twenty-first year) not to marry without the knowledge or reasonable consent of their parents. Should they refuse to heed his admonition, the pastor is not to assist at their marriage before first consulting the Ordinary (Canon 1034).

Impediments.

Division. Impediments are divided into 1. impedient and diriment, 2. public and occult. The latter division formerly proved a source of great difficulty. Matters now appear to have been simplified by Canon 1037, according to which a public impediment is one which can be proved in the external forum, all other impediments being occult. Will this embrace impediments which in the past were considered public by *nature*, but which cannot be proved before the ecclesiastical courts? We think not. There is still another division, viz. impediments of *major*, and impediments of *minor grade*. This

division, which was introduced for the first time in 1908, is now modified in accordance with the revamping of the legislation on the individual impediments themselves Impediments of minor grade are: 1. consanguinity in the third degree of the collateral line; 2. affinity in the second degree of the collateral line; 3. public propriety (*publica honestas*) in the second degree; 4. spiritual relationship; 5. crime arising from adultery and the promise of marriage, or the attempt to marry even civilly. This last impediment has been added to the arrangement of 1908. All other impediments are of major grade (Canon 1042). The practical application of this division is to be found in Canon 1054, wherein it is stated that a dispensation from an impediment of minor grade is not annulled by an *obreptio falsi* or a *subreptio veri*, even though the only reason assigned in the petition is false.

Dispensation. I. In urgent danger of death Ordinaries of places, in order to settle the conscience, and, if the case permits, to legitimate the offspring, may dispense their own subjects wherever they happen to be, and all others who are actually stopping in their dioceses, from —1. the form of marriage, i. e. the presence of priest and witnesses; 2. all and the several impediments of ecclesiastical law, either public or occult, even though multiple, those impediments excepted which arise from priesthood, and, provided the marriage has been consummated, from affinity in the direct line. In using this faculty the Ordinary must observe the following conditions, viz. he must take care to have the scandal removed or prevented, and in the case of dispensation from the impediments of mixed religion and disparity of cult, first obtain the customary guarantees (Canon 1043). Formerly, bishops were vested with a similar faculty, which could be used, however, only in favor of *concubinarii*, or of those joined

in civil marriage who were dangerously ill on account of *sickness*. These restrictions are now removed; the faculty may be employed in favor of all who are in urgent danger of death from any cause whatsoever. The following points may be mentioned in this connexion. The Ordinary may dispense even from the impediment arising from diaconate or solemn religious profession; from affinity in the direct line arising from a marriage that had not been consummated, v. g. so as to permit one to marry one's daughter-in-law; from several impediments simultaneously, together with the form of marriage. The reasons demanded for the use of this faculty are either the legitimation of the offspring, not, however, of adulterine or sacrilegious offspring in conformity with Canon 1051, or the soothing of the conscience of one or both parties, even of the party who is not in danger of death.

II. In the same circumstances, viz. in urgent danger of death, and for the purpose of soothing the conscience, and, if the case permit, legitimating the offspring, but only for those cases in which not even the Ordinary of the place can be approached, the following have the same faculty: 1. the pastor; 2. any priest who, when the Ordinary, or the pastor, or a priest delegated by either cannot be reached by the parties concerned, assists at marriage in danger of death; 3. the confessor. The confessor, however, may use this faculty for the internal form only, and then only in the act of sacramental confession (Canon 1044). With the exception of the confessor, those who make use of this faculty are to notify the Ordinary of the place, so that the dispensation may have force in the external forum, and to record the dispensation in the Marriage Register (Canon 1046).

III. Ordinaries of places may dispense from all the aforesaid impediments, when an impediment is discov-

ered after all arrangements have been made for the wedding, and the marriage cannot be postponed until a dispensation has been obtained from the Holy See, without serious consequences. Still, the Ordinary may not use this faculty without first demanding the guarantees in the case of mixed marriage, and without preventing scandal (Canon 1045). It should be remarked that this faculty applies to impediments only, not to the form of marriage; hence, the Ordinary could not dispense with the presence of the priest and witnesses. This faculty holds good for the revalidation of marriage also, provided there is danger in delay, and not time enough to recur to the Holy See. The same faculty described in this number (III) is possessed likewise by all these enumerated under II, however, only for occult cases in which not even the Ordinary of the place can be reached, or only with danger of violating secrecy (Canon 1045). This canon should settle many doubts in reference to the so-called *casus perplexus*. Since the use of telephone, telegram and cable are extraordinary measures, the Ordinary would not be obliged to employ them in the above mentioned cases in order to apply for a dispensation from the impediment. Finally, the Ordinary of the place is not to use any faculties he may possess, whenever application for a dispensation has been made to the Holy See, except for a grave and urgent reason, in which case he is immediately to notify the Holy See of his action (Canons 1058 and 204). Since the bishop's jurisdiction is not suspended in such a case, this rule applies only to the licit use of his faculty.

Accumulation of Faculties. Whether and when Ordinaries could accumulate their faculties so as to dispense from several impediments simultaneously, were very vexed questions at times in the past. The new law seems clear. 1. Those who have a *general* faculty to dispense from a

certain impediment (not, however, a faculty to dispense in one or the other case), may, unless the contrary is expressed in the indult, dispense from said impediment even when multiple, v. g. multiple affinity or consanguinity; 2. those having faculties to dispense from several impediments belonging to different species, either impedient or diriment, may dispense from all said impediments, even though public, occurring in the same case (Canon 1049). If in a certain case there should exist one or more *public* impediments from which one has faculties to dispense, and at the same time an impediment from which one cannot dispense, recourse must be had to the Holy See for a dispensation from all the impediments in the case. If, however, the impediment or impediments from which one can dispense are discovered only after a dispensation has been obtained from the Holy See, one may use one's faculties, and dispense from the remaining impediments (Canon 1059). A dispensation from a diriment impediment granted by virtue either of ordinary jurisdiction or of jurisdiction delegated by means of a general indult, *ipso facto* contains the legitimation of the offspring, to the exclusion of offspring which is either adulterine or sacrilegious (Canon 1051). Hence there is no need for the one dispensing to declare the offspring legitimated, since the dispensation effects the legitimation automatically.

Form of Dispensation. A dispensation granted from a specified degree of consanguinity or affinity is valid, even though an error concerning the degree crept into either the petition or the dispensation by mistake, and provided 1. the degree actually existing is inferior to the one mentioned, or 2. even though another impediment of the same species of an equal or inferior degree has been omitted (Canon 1052). Thus, if by mistake a dispensa-

tion was requested for the second, instead of the third degree of consanguinity, a dispensation granted for the second degree would suffice for the third degree but not *vice versa.* Likewise, if one asked for a dispensation from the third degree, and received by mistake a dispensation from the second degree, the dispensation would be valid. Again, if by mistake one applied for a dispensation from the second degree of simple consanguinity, whereas in reality there existed an impediment of multiple consanguinity in the second degree, the dispensation might be used. A dispensation granted by the Holy See from *matrimonium ratum non consummatum,* as also the permission accorded by the same to contract a fresh marriage in the case of the presumed death of the other partner, contains also a dispensation from the impediment of crime due to adultery and the promise of or attempt at marriage, not, however, from the impediment of crime due to other causes (Canon 1053).

Fees. No other fee may be demanded by the Ordinaries or their officials on the occasion of granting a dispensation, than a moderate sum from those who are not poor, to be employed in defraying the expenses of the chancery. All customs to the contrary are reprobated, unless the Holy See has given special faculties in the matter. Moreover, restitution must be made by those who act contrary to this provision (Canon 1056). Whence we are to conclude that except for postage etc. no fees may be demanded of the poor. But nowhere in the Code do we find a definition of the term *pauperes.* Since currency so rapidly depreciates, the Holy See deemed it wise, perhaps, to lay down no hard and fast rules on the subject. DeSmet is authority for the statement that even in recent times the Sacred Penientiary considered as *pauperes* those whose joint fortune did not amount to 3,000 francs,

or about $600 of our money, and as *miserabiles* those who lived solely by the labor of their hands. The faculty granted to our Bishops is found in Formula T. no. 15: "Exigendi modicas mulctas tam a divitibus quam a pauperibus juxta vires in elargiendis dispensationibus matrimonialibus, exceptis tamen ab hoc mendicis; et dummodo mulctae sic exactae in pios usus fideliter omnino erogentur." What changes may be made in the faculties of our Ordinaries, it is impossible to forecast; for which reason I have purposely avoided reference to them in the course of these pages. Before concluding, let me remark in general that whenever a custom is reprobated in law, no period of time, no matter how long, can ever render it reasonable (Canon 27).

Execution. Those granting a dispensation by virtue of faculties delegated by the Holy See are to make express mention of the delegation in the act of dispensing (Canon 1057). Failure to comply with this injunction does not render the dispensation void.

PROHIBITIVE IMPEDIMENTS.

With the exception of the change already noted under espousals, and the change to be noted in connexion with the new laws regulating *closed time*, the old prohibitive impediments remain unchanged. Still, a new prohibitive impediment has been introduced, viz. in countries in which *legal affinity* arising from adoption renders marriage unlawful according to the civil law, such affinity constitutes a prohibitive impediment in Canon Law (Canon 1059). This is not the sole instance in which the new Code defers to the civil law. Another instance is found in the title on Contracts, where the principle is established that in ecclesiastical matters the prescriptions of the civil law in reference to contracts, their annulment

and effects, are to be followed, except when contrary to divine law, or when Canon Law provides otherwise (Canon 1529). Still another instance will be recorded when treating of diriment impediments. Perhaps it may not be out of place to call attention to some of the other features emphasized by the new legislation under the heading of prohibitive impediments.

Mixed Religion. The principles of the natural law, together with the present law regulating marriage between Catholics and baptized non-Catholics, are restated. As is evident, the Church will not permit such marriages unless there is moral certainty that the customary guarantees will be kept (Canon 1061). Consequently, the pastor should not apply for a dispensation, if this certainty be not had. In the matter of guarantees it may be noted that, although the Catholic party is not required by law to give a guarantee to that effect, he is, nevertheless, under an obligation prudently to strive to bring about the conversion of the non-Catholic partner (Canon 1062). It is obvious, therefore, that the pastor must impress this obligation upon the Catholic. Conformably with Canon 1063, if a pastor knows for certain that the parties, after obtaining a dispensation from the impediment of mixed religion, have married either personally or by proxy before a non-Catholic minister, or intend renewing their consent in the presence of the same, after being married before the priest, he is not to assist at the marriage except for most weighty reasons, and only after the scandal has been removed, and the case referred to the Ordinary. Still, when required to do so by law, the parties are not forbidden to appear even before a non-Catholic minister acting merely in the capacity of a civil official, in order solely to comply with the law, and thus be entitled to the civil effects (l. c.). Needless to add,

in this latter case the parties are to be instructed beforehand to go through the civil ceremony without giving matrimonial consent, which must be given only before the priest and witnesses. The obligations of pastors previous and subsequent to mixed marriages are rehearsed in Canon 1064. Here it will suffice to note that pastors are obliged to watch that the parties faithfully keep their promises. This applies also in the case of those who have married outside the parish, but are resident within its limits. Instructions follow in Canons 1065-1066 as to the manner of acting with those (a) who have joined condemned societies, or who have apostatized, without however joining a non-Catholic sect; (b) also with public sinners or those who are publicly known to be under censure, and have not yet been reconciled. The pastor is not to assist at the marriage of such persons without first consulting the Ordinary and awaiting his instructions. In the case of those mentioned under (b) the pastor may proceed with the marriage, should there be an urgent reason, and if there be no time left for consulting the Ordinary.

DIRIMENT IMPEDIMENTS.

Age. For the purpose of contracting marriage the age of legal puberty has been changed. Thus, males before the completion of their sixteenth year, and females, of their fourteenth year, are debarred from contracting valid marriage. Otherwise the age of puberty remains the same as in the past. Whether or not *malitia supplet aetatem*, does not appear. The fact that no mention is made thereof, joined to the hereafter advanced age of legal puberty, leads us to conclude that it does not. Even though marriage contracted after the aforesaid age is valid, nevertheless pastors should endeavor to keep young

people from marrying before the age usual in the country (Canon 1067).

Impotency. In this connexion let it suffice to remark that marriage is not to be hindered when the impediment of impotency is doubtful either in law or in fact (Canon 1068). Wherefore, a woman who has submitted to the Porro operation, losing thereby the womb and both ovaries, is, to say the least, doubtfully impotent in law, and as a result is not to be disqualified from marriage. This is in keeping with the recent procedure of the Congregation of Sacraments.

Ligamen. When a former marriage is invalid, or has been annulled for any reason whatsoever, it is not permitted licitly to contract a fresh marriage until the nullity or annulment of the former marriage has been clearly and legitimately established (Canon 1069). Hence, it is not the duty of the pastor or of the confessor, but of the bishop, to permit marriage in the circumstances.

Disparitas Cultus. The impediment of disparity of cult will exist hereafter only between persons baptized in the Catholic Church or converted thereto on the one hand, and unbaptized persons on the other (Canon 1070). If, therefore, a person who was not baptized in the *Catholic* Church, and who did not subsequently join the Church, were to marry an unbaptized person, said marriage would be valid. On the contrary, were a person after baptism in the Catholic Church or conversion to same to fall away, his marriage with an unbaptized partner would be invalid. Furthermore, if at the time of marriage a person was commonly held to have been baptized, or if his baptism was doubtfully valid, the validity of the marriage is to be sustained until it is proved with certainty that one person had been baptized, and the other had not been baptized (l. c.). This positive statement

settles what was previously disputed. However, the presumption is merely a *presumptio juris*, not *juris et de jure*, and consequently may be rebutted.

Raptus. Formerly, in order to constitute the impediment of *raptus*, a violent abduction coupled with the intention of marriage was necessary. Under these circumstances a valid marriage could not take place before the woman abducted had been released from her place of detention. Thus far the law remains the same. In addition, the terms of the new law have been extended so as to include the case of a woman who is violently detained with the intention of marriage in a place either in which she is staying (therefore no abduction) or to which she has gone of her own free choice, v. g. elopement (Canon 1074).

Consanguinity. As in the past, this impediment extends to all degrees of the *direct* line; but in the *collateral* line it extends only to the *third* degree inclusive (Canon 1076). This Canon likewise contains a prohibition against permitting marriage when a doubt exists as to whether or not the parties are related by blood in any degree of the direct, or in the first degree of the collateral line. The reason for this injunction is very likely to be found in the possibility of some applying, in the case of degrees which are doubtfully of the *natural* law, the power granted to Ordinaries in Canon 15, and by virtue of which they may dispense even from invalidating laws in the case of a *dubium facti*, provided it be a law from which the Pope usually dispenses.

Affinity. Affinity constitutes a diriment impediment in all degrees of the direct line, and to the second degree inclusive of the collateral line (Canon 1077). According to Canon 97 affinity arises solely from valid marriage, whether *ratum* only or *ratum et consummatum*. Whence we may deduce the following: (a) the impediment of

affinity arises even from a valid marriage which has not been consummated. Sin committed with such a relative would hereafter seem to constitute the sin of incest. (b) Affinity does not result from *copula illicita*; hence, the sin of incest which formerly arose under this head, will cease to exist.

Public Propriety. In future the impediment of public propriety will arise from *invalid* marriage whether consummated or not, and from public or notorious concubinage. It is a diriment impediment between a man and the woman's blood relatives in the first and second degree of the direct line, and *vice versa* (Canon 1078). Thus, public propriety no longer arises from valid betrothment. Mark also that the impediment does not extend to the collateral line. Here we ask, when is concubinage public or notorious? It is public when the fact is already published among the people; or, if not so published, the circumstances are such that one may and must prudently judge that it will easily be so published. It is notorious principally after a final sentence of a competent ecclesiastical judge or a judicial confession of guilt; also if publicly known, and the crime was committed under such circumstances that it cannot be kept secret or excused by law (Canon 2197). As is evident, this impediment must occasion many doubts.

Spiritual Relationship. Spiritual relationship will be confined to two cases only, arising, viz. (a) between the one baptizing and the one baptized; (b) between the one baptized and his sponsor (Canon 1079, 768). In these two cases only does spiritual relationship constitute a diriment impediment. Hence, if a parent were to baptize his child even without a just reason, he would not contract spiritual relationship with the other party, and could, therefore, use the *debitum*. We should observe

that, although spiritual relationship is contracted between the person confirmed and his sponsor only, a matrimonial impediment does not result therefrom. But the sponsor has an obligation of looking after the Christian education of his godchild (Canon 797). We should not forget that when Baptism is repeated *sub conditione*, no relationship is contracted, unless the same sponsor be had as in the former Baptism (Canon 763).

Legal Relationship. Legal relationship arising from adoption constitutes a diriment impediment in those cases only in which it is a diriment impediment according to the civil law (Canon 1080). This Canon disposes of much uncertainty which formerly surrounded the matter.

Crime. The impediment of crime appears to be unchanged (Canon 1075). In keeping with Canon 16, which states that ignorance does not excuse from invalidating laws, unless the contrary is expressly declared, we may conclude that, contrary to the opinion previously maintained by some, ignorance does not prevent one from contracting this impediment.

Matrimonial Consent.

The principles heretofore governing the nature of matrimonial consent and the impediment of error are repeated in Canons 1081-1084. In addition, the following points are to be noted. The fact that one knows or thinks that marriage under certain conditions is void, does not necessarily exclude matrimonial consent (Canon 1085). Thus a person who is aware that clandestine marriage is invalid, may still intend to marry and bind himself for life. The practical application of this principle is to be found in the revalidation of marriage without the renewal of consent. If one is able to speak, matrimonial consent is to be expressed in words; equivalent signs

may not be employed (Canon 1088). Since the Canon contains no invalidating clause, consent expressed by means of signs would not render the marriage void. For valid marriage consent must necessarily be given either personally or by proxy (l. c.). By implication, therefore, marriage by letter is pronounced to be invalid. For marriage by proxy the following conditions are to be observed. 1. Diocesan regulations should be observed. 2. For valid marriage the agent must have a special commission to contract marriage with a specified person, which commission must be signed by the principal and by either the Ordinary or the pastor of the place in which the commission is given, or by a priest delegated by either, or by at least two witnesses. 3. If the principal does not know how to write, the fact is to be noted in the commission, and another witness added, who must, likewise, sign the instrument. If these formalities are not observed, the commission is void. 4. If prior to marriage by the agent in the name of the principal, the latter should withdraw the commission or become insane, even without the knowledge of the agent, the marriage is invalid. 5. That the marriage may be valid, the agent must discharge his commission in person (Canon 1089). Marriage may also be contracted through an interpreter (Canon 1090). The pastor, however, is not to assist at marriages to be contracted either by proxy or through an interpreter, except for a grave reason, and provided there be no doubt as to the genuineness of the commission and the trustworthiness of the interpreter. Furthermore, time permitting, he is to get the permission of the Ordinary (Canon 1091).

Form of Marriage.

By the term *forma matrimonii* in law is meant the due observance of those formalities required in giving matrimonial consent. These formalities, according to the *Ne temere*, consist in giving matrimonial consent in the presence of a qualified Ordinary or priest and two witnesses. The legislation of the *Ne temere* has been modified in a few particulars.

Valid Assistance. Since our pastors, both removable and irremovable, are henceforth to be *parochi* in the canonical sense, it seems that they cannot validly assist at marriages until they have been induced into office with the required formalities (Canon 1444). In order to dispense with the aforesaid formalities, the bishop must do so in writing (l. c.). Under the present discipline Ordinaries and *parochi* are disqualified from validly assisting at marriage if nominally by public decree they are either excommunicated or suspended from office. In future they will be unable validly to officiate only after a condemnatory or declaratory sentence of excommunication, interdict or suspension from office (Canon 1095). A judicial sentence must contain the name of the guilty party (Canon 1874); hence, on this score there is no difference between the old and the new law. According to Canon 1868 a sentence is a decision by means of which a judge concludes a trial; decrees are all other judicial pronouncements. Whence we see the necessity for a change in terminology. Note likewise that a sentence of interdict disbars an Ordinary or *parochus* from validly assisting at marriage. Formerly, the Ordinary or parish priest could not validly assist at marriage unless invited and asked. The clause "invitati ac rogati" is now dropped, very likely because we can scarcely imagine a case in

which they are not invited at least tacitly (Canon 1095). Permission to assist validly at marriages within the territory of him who grants the permission, must be given expressly to a stated priest for a specified marriage. All general delegations of whatsoever nature are eliminated, save in the case of assistants for the parish to which they are assigned. Otherwise, the delegation is void (Canon 1096). Much doubt thus far connected with the subject of delegation should now disappear. By the term assistants (*vicarii cooperatores*) is here meant those who are detailed to assist the pastor in the care of the parish, because he himself cannot properly manage same on account of its size or for other reasons. Such assistants have an obligation of residence (Canon 476). Therefore, a priest invited by the pastor to assist him over Sunday could be delegated to officiate only at marriages which are expressly determined, but not for any marriage which should present itself. The case would be different when the pastor has leave of absence. The priest who takes his place, provided he has been approved by the Ordinary (Canon 465), may be delegated to assist at all marriages. Again, in conformity with Canon 1096, we must conclude that while the Ordinary might give the assistants general delegation for the parish to which they are assigned, he could not give them general powers for the entire diocese. The concluding paragraph of this Canon states that the pastor is not to give permission to assist at marriages within his own parish until all the requirements of the law for determining the *status liber* of the parties have been complied with. Consequently, the pastor may not shift this duty to the priest who is to officiate at the marriage.

Licit Assistance. In conformity with the recognized rule of law, "potest quis per alium, quod potest facere per

seipsum'', the pastor of the place in which the contracting parties have a month's residence, may give permission to another to assist licitly at a marriage in the latter's parish (Canon 1097). In the case of parties belonging to different Rites, the principle for licit marriage, viz. that as a rule the marriage should be contracted before the pastor of the bride unless a just reason excuses therefrom, is reversed, so that the marriage is to be contracted before the pastor of the groom, unless the contrary is provided by particular law (l. c.). Such special legislation exists for the Ruthenians in the United States, where the marriage is to be contracted according to the Rite of the bride and before her pastor.[1] A slight innovation is to be observed in connexion with entering the record of marriage in the Register of Baptisms. Formerly the law read ''statim''; now, however, ''quamprimum'' (Canon 1103). We may presume that the change in the wording is intended to dispel all undue worry, not to encourage carelessness, as is clearly indicated by ''quamprimum''.

Marriage without Priest Assisting. If the pastor, Ordinary, or a priest delegated by either cannot be had or approached *sine gravi incommodo*, marriage contracted in the presence of witnesses only is valid and licit: 1. *in mortis periculo*; 2. *extra mortis periculum*, when it is prudently foreseen that the aforesaid impossible state of affairs is to last for a month. Still in both cases, if another priest is handy, he is to be called in and assist at the marriage, together with the witnesses. The marriage, however, is valid even if contracted solely in the presence of the witnesses (Canon 1098). The points of difference to be

1 S. C. P. F. *Cum Episcopo.* 17 August, 1914. In Canada the marriage is to take place before the pastor of the groom. S. C. P. F. *Fidelibus Ruthenis.* 18 August, 1913.

noted between this legislation and the old, are: (a) formerly *in periculo mortis* when the Ordinary, the pastor, or a priest delegated by either could not be had, marriage could be validly and licitly contracted in the presence of any priest and two witnesses, but only to set the consciences aright, or, if the case permitted, to legitimate the offspring. Hereafter, although a priest must be had, if convenient, his presence is not necessary for validity. Neither are there any special reasons assigned for permitting such a marriage. (b) *Extra periculum mortis*, marriage heretofore could be validly contracted before two witnesses only, when the Ordinary, the pastor, or a priest delegated by either, could not be had *in aliqua regione*, provided this condition had actually lasted for a month. In future the impossibility need not be general in a certain place; it is sufficient that it exist in a particular case, v. g. of a man in detention to whom the pastor, etc. is denied access. Again, the marriage may be contracted *at once*, if there are solid reasons for judging that the impossibility is to continue for a month.

Subjects.

As regards the persons affected by the *Ne temere*, all those baptized in the Catholic Church, or converted thereto, even though they should later on become perverts, were bound by the law. An exception is now made in favor of children born of non-Catholic parents and baptized in the Catholic Church, provided such children have grown up from infancy in heresy, schism, infidelity, or without any religion. Such are excepted when marrying others who are not subject to the terms of the law (Canon 1099). Could this exception be invoked in favor of a child, if one of the parents was a Catholic, the other a non-Catholic, and the child is raised a Protestant after

the death of the Catholic parent? We have no hesitation in giving a negative reply, since the Canon speaks of non-Catholic parents, not parent: "ubi lex non distinguit nec nos distinguere debemus".

Time and Ceremonies.

Closed Time. The solemnization of marriage, i. e. only the solemn nuptial blessing, is forbidden from the first Sunday of Advent till Christmas inclusive, and from Ash Wednesday till Easter Sunday inclusive. For a just reason, however, the Ordinary may permit the solemn blessing during the aforesaid times. The couple is to be admonished to refrain from too great a display ("nimia pompa"). The Mass to be said must conform to the rubrics (Canon 1108). This power is granted to the Ordinary, not to the parish priest. The clause permitting the solemn nuptial blessing is already in force.

Ceremonies. It is well to note that, whereas no sacred rites are permitted in the celebration of mixed marriages, the Ordinary, should he foresee that greater evils will otherwise result, may permit them; not, however, the Mass (Canon 1102). For the same reason the Ordinary may also allow the marriage to take place in church (Canon 1109).

Matrimonial Effects.

The effects of marriage are too well known to require repetition. Still it might not be amiss to emphasize the following points, which are either insisted upon or clarified in the present chapter of the Code. Many may be pleased to learn that the Code *expressly* states that, so far as canonical effects are concerned, women are placed on a par with men, unless the contrary is positively stated in the law (Canon 1112). Parents are under a most grave

obligation to procure the religious, moral, physical and civil education of their children to the best of their ability, also to provide for their temporal welfare (Canon 1113). Those children are said to be legitimate who are conceived or born of either valid or putative marriage, unless marriage relations were forbidden the parents at the time of conception on account of the solemn vows of religion or sacred orders taken subsequent to marriage (Canon 1114). Thus, a child conceived before marriage and born of a woman after valid or putative marriage, is held to be legitimate until it is conclusively proved that the husband is not the father. Formerly, putative marriage had to be contracted *in facie Ecclesiae*, i. e. before the priest and witnesses. No such clause is here appended. Marriage is said to be *putative* if contracted in good faith by at least one of the parties, and remains putative until both parties are certain that it is invalid (Canon 1015). Presumed to be legitimate are those children who are born at least six months after the celebration of marriage, or within ten months after the discontinuance of the conjugal life (Canon 1115). These are merely *praesumptiones juris* and must yield to evidence. Children are legitimated by subsequent marriage, valid or putative, which is either contracted for the first time or revalidated, even though not as yet consummated, provided the parents were capable of marriage at the time of conception, or of pregnancy, or of birth (Canon 1116).

Separation.

Dissolution of the Bond. I shall confine myself to the so-called *Casus Apostoli* or Pauline Privilege. Two points are especially to be noted. 1. It would seem that the Pauline Privilege may be used in favor of baptized non-

Catholics (Canon 1121). The expression "conjux baptizatus" includes non-Catholics, since we are not to distinguish where the law does not distinguish. 2. The "interpellationes" are always necessary, even when impossible, unless a dispensation has been received (Canon 1121). We should also notice that the "interpellationes" are valid even when made privately. Proof, however, must be furnished for the external forum (Canon 1122). The extension to other countries, where like conditions exist, of the privilege granted in favor of the Indies (Canon 1125) does not concern us.

Separatio a mensa, toro, et habitatione. In the case of adultery, tacit condonation of the crime is presumed, unless, within six months, the guilty partner has been dismissed, abandoned, or a legal accusation preferred against him (Canon 1129). This is a new provision. In all cases of separation *a mensa* etc. the children are to be brought up by the innocent partner; or, if one of the parties is a non-Catholic, by the Catholic, unless the Ordinary should make some other arrangement in both cases for the good of the children. In every instance their Catholic interests are to be safeguarded (Canon 1132).

Revalidation of Marriage.

Simple Revalidation. To revalidate a marriage which is invalid owing to a *diriment impediment*, it is necessary that the impediment should have first ceased or been removed by means of a dispensation, and that matrimonial consent be renewed by at least the party who is aware of the impediment. Renewal of consent is required by ecclesiastical law for validity, even though both parties originally gave their consent and have not yet withdrawn it (Canon 1133). This renewal of consent consists necessarily in a fresh act of the will relative to the marriage

which was certainly invalid from the beginning (Canon 1134). The procedure to be followed is detailed by Canon 1135. 1. If the impediment is *public*, consent is to be renewed in the manner prescribed by law, i. e. by both in the presence of the priest and witnesses, or of the witnesses only in those cases in which their presence will suffice. 2. If *occult* and *known to both parties*, it will be enough for both parties to renew their consent privately and secretly. Wherefore, they need not do so before the priest and witnesses. Conjugal relations with the intention of renewing matrimonial consent would evidently suffice. 3. If *occult* and *unknown to one party*, it will be sufficient for the party who is cognizant thereof to renew consent privately and secretly, provided the consent of the other party still continue. Contrary to the hitherto generally recorded opinion, there is no mention here of notifying the other party. Consequently, as above, nothing further is required than, v. g. matrimonial relations with the express intention of renewing matrimonial consent. In conformity with Canon 1093, when a marriage is invalid on account of a diriment impediment, matrimonial consent, when given, is presumed to last until its withdrawal is evident.

Lack of Consent. Marriage which is invalid on account of *lack of consent*, is revalidated by renewal of consent on the part of the person who failed to consent, provided, of course, the consent of the other party still continues. If lack of consent was solely *internal*, it will be sufficient for the party who did not consent, to renew consent *interiorly*; hence as above. If failure to consent had been *externalized*, consent must be renewed *exteriorly* by the party failing to consent, either before the priest and witnesses, if *public*, or in some other private and secret manner, if *occult* (Canon 1136). There is no mention of notifying

the other party. Nevertheless, it would seem that the presence of the other party is required, when consent is to be renewed in *due form* before the priest and witnesses. Even when consent is to be renewed privately, because the externalization was merely occult, we must remember that internal renewal is of no avail. We need scarcely add that this Canon will occasion many queries and difficulties.

Lack of Form. According to Canon 1137, marriage which is invalid owing to lack of form, may not be revalidated except by observing the due form.

Sanatio in Radice. A *sanatio* may be obtained only when marriage was void owing either to some ecclesiastical diriment impediment or lack of due form; not, if the diriment impediment is of the divine or natural law. The Church will not grant a *sanatio* even when an impediment of the divine or natural law has ceased (Canon 1139). The effects of *sanatio* are: 1. it revalidates the marriage from the moment the dispensation has been given; 2. as regards the canonical effects, it retroacts to the beginning of the unbroken matrimonial consent, v. g. children considered legitimate from the start (Canon 1138). To procure a *sanatio* there must have been matrimonial consent on both sides, i. e. consent which would of its nature suffice, but which was rendered ineffective by reason of a diriment impediment, or lack of form. We may thus conclude that a *sanatio* may be obtained even when one or both parties knew their marriage was invalid on account of a diriment impediment or lack of form, provided they intended really to marry for life. Mutual matrimonial consent must have existed from the beginning, and not have been revoked by either party. In case it did not exist from the beginning, it must have been given later on, in which case the benefit of *sanatio* may be received. In this case the retroactive force in the matter of canonical effects, begins with the giving of consent (Canon 1140).

The foregoing meagre sketch of the changes introduced by the new law may afford us, perhaps, a faint glimpse of the marvelous adaptability of the Church to the varying conditions of succeeding ages. Thus, while remaining unshaken wherever principle is involved—as proof, witness the same rock-ribbed law regulating mixed marriage—she has so modified procedure and recast impediments as to give the whole edifice the appearance of a modern structure, and at the same time impart to it a strength born of the experience of centuries.

In conclusion, we wish to reiterate the statement made at the beginning of this article, viz. that the opinions herein expressed are of a merely tentative nature, and therefore can claim only a doctrinal, not an authentic, value. Many inquiries will necessarily be addressed to the Congregation of Sacraments, to determine the force of various canons. For this reason the priest will be obliged to keep informed on the corresponding replies that can be expected from time to time. In the meantime, we trust the conclusions reached above, and which we believe to be based on approved principles of law, may be of assistance to the hard-working pastor of souls.

IN connection with the foregoing, two questions regarding marriage of infidels and the new Code of Canon Law, were proposed to us and are here answered:

Qu. 1. Can a marriage *inter infideles* ever be absolutely annulled? It would seem, since with them it is a mere contract, though of course a sacred one, that the persons contracting by mutual understanding and having recourse to the only human authority which they recognize for their public declaration of such mutual understanding, could simply separate and join in another marriage. Lehmkuhl does not exactly, as it seems to me, deny this right of the contracting parties, but he is of the opinion that the Church would not incline to admit such a right. Would not the general opinion of the American people, that civil divorce really divorces, lead one to think that infidels, when contracting marriage, have this thought and are under the impression that their contract holds good only so long as both parties are willing to keep it up? True, God being the Creator of all men and therefore also the Legislator for all men, wishes that the marriage contract be indissoluble. But does not the Church for good reasons exercise the right to annul such marriages? Is there not some difficulty and uncertainty among theologians with regard to this matter?

2. The new Code of Canon Law states that marriage between infidels is a true marriage and also that marriage between an infidel and a person baptized in the Protestant church is a true marriage. I believe this was always so; the Church never legislates for those outside the Church. *Ergo.*—Some maintain this is a new Canon. For my part, I do not admit this. But it seems that a marriage between an infidel and a person baptized in a Protestant church was null and void, and that the ecclesiastical matrimonial courts have given their decisions accordingly.

Resp. 1. The Holy Office in an Instruction of 28 March 1860 says: "It is quite certain that polygamy is absolutely illicit by the evangelical law. Hence, after Jesus Christ

had reëstablished the former sanctity, unity, and indissolubility of marriage, and had added to the contract the dignity of a sacrament for those who are baptized, it was not lawful either for an infidel or for a Jew or for any man to take more than one wife. Consequently, monogamy having thus divinely been reinstated, it is an *undeniable dogma of faith that there can be a lawful and valid marriage only between one man and one woman.*'' Lehmkuhl repeatedly teaches the same. Perhaps our correspondent refers to his Editio 11ma, num. 921, where Lehmkuhl discusses the sixty-seventh proposition of the Syllabus of Pius IX: ''Jure naturae matrimonium non est indissolubile et in variis casibus divortium proprie dictum auctoritate civili sanciri potest,'' and draws the conclusion that ''from this condemned proposition it cannot be proved that by the very law of nature, viewed in itself, the civil authority as such is void of all power to dissolve the marriage bond, since it is a fact that God in the Mosaic law did concede some power to dissolve the marriage bond.'' ''Nevertheless,'' he concludes, ''the primitive form of marriage had been established by God Himself in such a manner that its unity and indissolubility have long since been the law for all mankind.'' With regard to the bill of divorce it may be said that according to the Mosaic law it was not an altogether arbitrary divorce, but in the drawing up and handing of it over, it required no assistance of any court.

As for public opinion in the United States, love is the same for us as for other people, and it is believed to be lasting for life between the parties, and at the time of marriage they are not as a rule thinking of separation or of divorce. Rome has repeatedly reiterated the teaching that where marriage is entered into with a condition that is against the unity or indissolubility of the marriage

or against its primary purpose, such marriage is null and void. The Church, however, demands absolute proof that such was the condition under which the parties contracted, and that they would not marry except under that explicit agreement.

2. The regulation of the marriage of baptized persons, whether baptized in the Catholic Church or outside it, belongs to the Church, to the exclusion of the civil power. All baptized persons are subject to the Catholic Church and held by her laws unless she exempts them from certain legislation. Whether the marriage between an unbaptized person and one baptized is subject to the laws of the Church exclusively, is in controversy; but the baptized party is surely subject to the laws of the Church and indirectly therefore in many cases also the non-baptized person—for example, if the baptized party should be a blood relation in the forbidden degrees; in this latter case the subject of the Church cannot validly contract marriage without the Church's sanction.

It should be noted, however, that Canon 1070 of the new Code makes one important change in this matter, *exempting those baptized outside the Catholic Church from the "impedimentum dirimens disparitatis cultus,"* so that the marriage of a baptized Protestant with a non-baptized person is valid. This is distinctly a favor not granted formerly. Henceforth marriages will be invalid by reason of disparity of cult only between a person not baptized and one *baptized in the Catholic Church or converted to the Church from heresy or schism.*

APPENDIX

I

DECREE OF THE SACRED CONSISTORIAL CONGREGATION CONCERNING CERTAIN EPISCOPAL FACULTIES.

THE issue of the *Acta Apostolicae Sedis* for 1 May, 1918 (pp. 190-193), contains an important decree of the Consistorial Congregation concerning certain faculties of the Bishops. It calls attention to the fact that the new Code of Canon Law expressly grants to the Ordinaries many faculties which they hitherto enjoyed only by virtue of special indults from the Holy See (v. g., Canons 1043 and 1045 concerning matrimonial dispensations), so that they now have sufficient ordinary power to grant needful dispensations. In consequence these temporary indults appear to be superfluous, and may cause confusion since they are frequently at variance with the new regulations of the Canon Law.

For the above reasons, as well as to secure greater uniformity in the Church and to remove these variances in canonical discipline, Pope Benedict XV has sanctioned the following regulations:

1. All faculties, contained in the above-mentioned indults, granted for the external forum to Ordinaries of dioceses which are under the common law, are voided after 18 May (1918). This regulation does not apply to places under the jurisdiction of the Congregation *De Propaganda Fide*.

2. If war conditions or other reasons prevent knowledge of this decree from reaching certain places before the above date, the Pope will ratify any dispensations granted in virtue of the former faculties. The Ordinaries shall obey this decree from the date they receive notice of it.

3. Faculties for the internal forum granted by the Sacred Penitentiary, and other faculties granted on account of the present war, or those obtained by Bishops for special reasons, are not abolished.

4. In addition to the faculties granted in Canons 1043-1045, the Pope, in view of the circumstances of time and place, makes the following additional concessions:

a. The Bishops of America, Philippine Islands, East Indies, Africa (except along the Mediterranean Sea), and Russia can dispense for five years, beginning with 18 May, 1918, from the minor impediments mentioned in Canon 1042, as well as grant a *sanatio in radice* for marriages which were invalid by reason of the presence of these minor impediments.

b. Likewise for five years the same Bishops can dispense from public or secret major impediments established by ecclesiastical law (excepting priesthood and affinity in the direct line), and from the impediment of mixed religion, if the petition for dispensation has been sent to the Holy See, and an urgent need for dispensing arises before a reply has been received. In granting these dispensations the Bishops are to observe the rules laid down in the Code, and the customary restrictions in the case of marriage with Hebrews and Mohammedans, and also respect the rights of the Congregation of the Sacraments in regard to fees.

c. The Bishops of France, Great Britain and Ireland, Germany, Austria, and Poland, may use the above faculties as often as, during the present war, recourse to the Holy See is difficult or foreseen to be impossible during the space of one month.

II

FAST AND ABSTINENCE LAWS.

THE present rules for fasting and abstinence are comprised in the following canons of the new Code:

Canon 1250. The law of *abstinence* forbids the eating of flesh meat and broth made of meat, but does not exclude the use of eggs, milk and the products of milk (viz. cheese and butter), and any seasonings of food, even those made from the fat of animals.

Canon 1251. 1. The law of *fasting* ordains that only one full meal a day be taken, but does not forbid a small portion of food in the morning and in the evening. As regards the kind of food and the amount that may be taken, the approved customs of one's locality are to be observed.

2. One may partake of both fish and flesh meat at the same meal. The full meal may be taken in the evening and the collation at noon.

Canon 1252. 1. *Abstinence only* is enjoined on the Fridays throughout the year.

2. *Fast and abstinence* are required on the following days: Ash Wednesday, the Fridays and Saturdays in Lent, Ember days, Vigils of Pentecost, of the Assumption, of All Saints' Day and of Christmas Day.

3. *Fast only* is ordained for all the other days of Lent.

4. On Sundays and holidays of obligation, unless these last occur in Lent, there is neither fast nor abstinence, and if a vigil that is a fast day fall on a Sunday the fast is not to be anticipated on Saturday, but is dropped altogether that year. The Lenten fast and abstinence cease at twelve o'clock noon on Holy Saturday.

Canon 1253. The foregoing canons *change nothing in special indults*; they do not affect the obligations imposed by vow either of individual persons or communities, nor alter the constitutions and rules of religious organizations and approved institutes of men or women living in community, even those without vows.

Canon 1254. 1. The law of *abstinence* binds all who have completed their seventh year of age.

2. The law of *fasting* embraces all who have completed their twenty-first year, until the beginning of their sixtieth year.

These few canons contain all the rules of the new Code on fasting and abstinence. The law clearly defines what is meant both by fasting and abstinence and enumerates the days on which either one or both obligations are imposed. By order of Pope Benedict XV, issued on 20 August, 1917, the canons on fast and abstinence are to go into effect immediately.[1]

On abstinence days flesh meat is forbidden and also broth made of meat. This rule is not new. Some Catholics have the mistaken notion that, since the fat of animals may be used for cooking, it is lawful to eat bacon, e. g., with baked beans. It should be borne in mind that the only reason why the Church allows dripping and lard for cooking at all, is to facilitate the preparation of the meal.

Eggs and milk products are now allowed in all countries at the principal meal on fast days. Heretofore they were not allowed, except by special indult in Lent, and in some countries they were not permitted even on other fast days.

It should be noted that the Code gives no general rules concerning the quality and quantity of food that may be taken at the evening collation, other than the prescription that the approved customs of countries are to be observed. There is no doubt that it is absolutely forbidden to all bound by the law of fasting and abstinence to partake of meat twice a day on either fast or abstinence days. Whether eggs, milk and the products of milk are allowed at the evening collation on fast days is to be learned from the lawful customs of one's locality, or from special indults.

Permission to eat flesh meat at the principal meal on all days in Lent, with the exception of the days mentioned

[1] Cf. *Eccl. Review*, November, 1917, p. 537; also pp. 541-543.

above, is a concession which has never before been granted for the whole Church.

Another favor granted by the Code is the allowing at the same meal of fish and flesh on fast days when meat is allowed. Repeatedly since the time of Pope Benedict XIV the Holy See had forbidden fish and flesh at the same repast on any fast day and even on Sundays in Lent.

The recent rule that there is to be neither fast nor abstinence on a holiday of obligation, excepting in Lent, even if it falls on Friday or on a fast or abstinence day, is embodied in the Code (Can. 1252, 4); and in addition the vigil fast is dropped when the vigil falls on a Sunday or a holiday of obligation. Formerly the fast had to be anticipated under these circumstances.

The Advent fast on Wednesdays and Fridays (or on Fridays only, which was obligatory in most countries) has been abolished altogether. Most dioceses in the United States observed the fast on the Fridays of Advent.

III

COMMISSIONE PONTIFICIA PER L'INTERPRETAZIONE DEL CODICE DI DIRITTO CANONICO.

Eminentissime Princeps,

A dubia proposita a Revmo Ordinario Campivallen. (Valleyfield), et ab Emtia Tua Revma transmissa h. Commissioni, nempe:

I. Utrum pueri, qui etsi septimum aetatis annum nondum expleverunt, tamen ob aetatem discretionis, seu usum rationis ad primam Communionem admissi iam fuerint, teneantur duplici praecepto confessionis saltem semel in anno, et Communionis semel in anno, saltem in Paschate?

II. Utrum canon 1252 iam ubique obligandi vim habere inceperit, non obstantibus legibus particularibus, etc?

Emus Card. Petrus Gasparri Commissionis Praeses respondet:

Ad I affirmative.

Ad II affirmative.

Et ratio, quoad primum dubium, in aperto est. Nam quamvis can. 12 statuat: "Legibus *mere* ecclesiasticis non tenentur . . . qui licet rationis usum assecuti, septimum aetatis annum nondum expleverunt", subdit tamen "nisi aliud in iure *expresse* caveatur". Iam vero in can. 859 § 1, et 906 *expresse* cavetur: "Omnis utriusque sexus fidelis *postquam ad annos discretionis, idest ad usum rationis pervenerit*, etc."

Quae dum communico, Eminentiae Tuae Revmae cuncta fausta a Deo adprecor.

Romae, 3 Januarii, 1918.

P. Card. Gasparri.

Aloisius Sincero, *Secrius.*

IV

PONTIFICIA COMMISSIO AD CODICIS CANONES AUTHENTICE INTERPRETANDOS.

De Dubiorum Solutione.

Commissio a Summo Pontifice instituta ad Codicis canones authentice interpretandos, in plenario coetu die 9 decembr. 1917 habito, statuit respondendum esse tantum dubiis propositis ab Ordinariis, a Superioribus majoribus Ordinum et Congregationum religiosarum etc., non vero iis quae proponantur a privatis personis, nisi mediante proprio Ordinario.

Romae 9 decembris 1917.

P. Card. Gasparri, *Praeses.*

Aloisius Sincero, *Secretarius.*

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